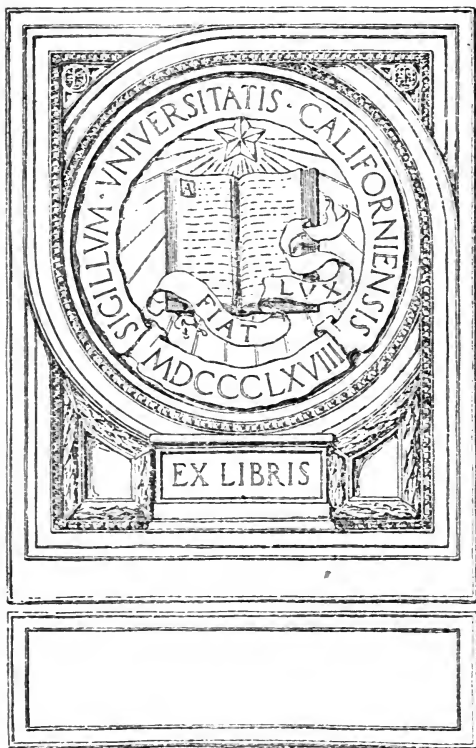


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More business than the previous
year

EXPLANATORY NOTE

This new volume in the "Debaters' Handbook Series" is uniform with its predecessors, and like them, offers as the chief reason for compilation the manifest need among debaters for material on the subject under treatment, and the general lack of duplicate library copies of publications in which material may be found. The best articles on the subject have been collected and reprinted entire or in part, the aim being to furnish the best available material on both sides of the question without unnecessary repetition. "Resolved that capital punishment should be abolished" is the adopted form of statement for the question; so it will be apparent that the affirmative references give arguments against and the negative references, arguments in favor of capital punishment.

136 41 12 CONTENTS

BIBLIOGRAPHY

Bibliographies	1
General Works	1
Magazine Articles	
General	2
Affirmative	3
Negative	7

SELECTED ARTICLES

Palm, Andrew J. Capital Punishment	
.....American Journal of Politics	9
Wiley, Rev. Charles, D. D. Retributive Law and Capital Punishment.....	American Presbyterian Review 10
Garner, James W. Crime and Judicial Inefficiency.....	
.....Annals of the American Academy	10
Barrows, Samuel J. Legislative Tendencies as to Capital Punishment.....	Annals of the American Academy 12
Cutler, J. E. Capital Punishment and Lynching.....	
.....Annals of the American Academy	17
Shipley, Maynard. Homicide and the Death Penalty in Mexico.....	Annals of the American Academy 22
Shrady, George. Death Penalty.....	Arena 28
Ferguson, John. Death Penalty.....	Canadian Magazine 39
Capital Punishment Denounced.....	Charities 39
Neuman, B. Paul. Case against Capital Punishment.....	
.....Fortnightly Review	42
Galbreath, Charles Burleigh. Shall the State Kill?.....	
.....Friends' Intelligencer	56
Buckley, J. M. Death Penalty.....	Forum 73
Stillman, James W. Abolish the Death Penalty.....	
.....Green Bag	84

Mosby, Thomas Speed. Does Capital Punishment Tend to Diminish Capital Crime?.....	Harper's Weekly	84
Spitzka, Charles. Should Capital Punishment Be Abolished?.....	Harper's Weekly	86
Roberts, W. J. Abolition of Capital Punishment.....	International Journal of Ethics	87
Heath, Carl. Reform and the Death Penalty.....	International Journal of Ethics	91
Heath, Carl. Treatment of Homicidal Crimes.....	International Journal of Ethics	92
McClure, S. S. Increase of Lawlessness in the United States	McClure	93
Maude, W. C. Shall We Abolish the Death Penalty for Murder?	Month	97
Substitute for Hanging.....	Nation	100
Lilly, W. S. In Praise of Hanging.....	New Review	101
Cheever, George B., Hand, Samuel and Phillips, Wendell. Death Penalty.....	North American Review	103
Adelman, Abram E. Capital Punishment.....	Public	131
Gallows in America.....	Putnam's Magazine	134
McGilvary, E. B. Is Capital Punishment Justified?.....	Review of Reviews	134
Does Capital Punishment Prevent Convictions?.....	Review of Reviews	136
Vicars, G. Rayleigh. Ought Capital Punishment to be Abolished?	Westminster Review	137
Hopkins, T. M. Capital Punishment: Ineffectual and Mischievous	Westminster Review	144
Hort, G. M. Emotion as a Law-Maker: a Sociological Suggestion	Westminster Review	144
Heath, Carl. Homicidal Crime and the Death Penalty Abroad	Westminster Review	146
Ingram, Advocate C. J. Shall We Abolish the Death Penalty?	Westminster Review	156
Heath, Carl. Modern Penology and the Punishment of Death	Westminster Review	166



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CALIFORNIA

SELECTED ARTICLES ON CAPITAL PUNISHMENT

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Capital Punishment. Andrew J. Palm.

It needs no extraordinary judgment to comprehend the truth that if government wishes to teach that human life is sacred it must not set the example of deliberately destroying it. As well might it steal from the thief or burn the house of the incendiary as to snuff out a human life to teach that human life is sacred and should be held inviolable. The evil force of bad example is the strongest argument that can be made against the death penalty and in itself should be sufficient to annul the law of life for life in every civilized country on the globe. The Quakers believe in the sacredness of human life and they consistently and persistently refuse to make their actions belie their belief. They refuse to go to war and refuse to assist in putting men to death either legally or illegally and the result of this teaching for centuries is that Quakers do not commit murder. The man who has proper respect for the rights of property needs no law to prevent him from taking his neighbor's goods. The man who has proper reverence for human life needs no law to restrain his hand from murder, but he who would argue "high regard for human life can be instilled by tanded executioner, legal though his murderous trade may be, should be sent to an institution for the feeble-minded.

Under the old Jewish law the violation of every commandment but one was punishable with death and when it has been shown that according to the Old Testament we should abolish slavery and polygamy and cease to kill the wife who believes in a different god from the one adored by her husband, then it will be time to advocate capital punishment for murder on a Hebraic basis. Though our early fathers were a savage people, the law of death for murder, so emphatically enjoined, was

flagrantly violated, and even they, ignorant and savage as they were, were better than their cruel law. If the law of life for life, as laid down by Moses, was good, it surely should have been carefully observed in those early days, and yet Cain was a murderer as were Moses, Lamech, David, Simeon, and Levi, and yet not one of them was made to atone for his crime by giving up his life. The law seems to have been a failure even then as it has been in all ages since.

American Presbyterian Review. 20: 414-31. July, 1871.

Retributive Law and Capital Punishment. Rev. Charles Wiley, D. D.

We think it, in fact, one of the features of degeneracy of the present age, that the sentiment of national justice appears to be so feebly recognized. It is this sentiment that lies at the foundation of all vigorous administration of law. It presides at the first formation of law. It sustains the judge upon the bench. It fortifies and supports the whole process of criminal adjudication, and to this, as we have already said, we shall have occasion to appeal, in the sequel of our subject, as having an important place in any sound views that may be taken of the question of capital punishment. . . . We advocate the practice of capital punishment on the broad principle that it is in accordance with the clearest dictates of natural justice.

Annals of the American Academy. 29: 601-18. May, 1907.

Crime and Judicial Inefficiency. James W. Garner.

Ex-President Andrew D. White, in a recent address at Cornell University, declared that as a result of extensive studies carried on through a long period of years and in all parts of the union he had become convinced that the United States leads a civilized world, with the exception perhaps of lower Italy and Sicily, in the crime of murder and especially of unpunished murders.

CAPITAL PUNISHMENT

11

The truth of this severe arraignment is easily established by reference to the statistics of crime in this and other countries. The appalling increase in the one crime of murder in the United States is apparent from the following table compiled by the Chicago Tribune and published in its issue of December 10th last.

YEAR	Number of murders and homicides in the U. S.	Number for each million of people.	Number of executions in the U. S.	Number of murders and homicides to each execution	Number of lynchings
1885.....	1,808	32.2	108	17	181
1886.....	1,499	26.1	83	18	133
1887.....	2,335	39.8	79	29	125
1888.....	2,184	36.4	87	25	144
1889.....	3,567	58.2	98	36	175
1890.....	4,290	68.5	102	42	123
1891.....	5,906	92.4	123	56	193
1892.....	6,791	104.2	107	63	230
1893.....	6,615	99.5	126	52	200
1894.....	9,800	144.7	132	73	189
1895.....	10,500	152.2	132	79	166
1896.....	10,652	151.3	122	87	131
1897.....	9,520	132.8	128	74	166
1898.....	7,840	107.2	109	72	127
1899.....	6,225	83.6	131	87	107
1900.....	8,275	108.4	117	71	115
1901.....	7,852	100.9	118	67	135
1902.....	8,834	111.7	144	61	96
1903.....	8,976	112	124	72	104
1904.....	8,482	104.4	116	73	87
TOTAL.....	131,951	.....	2,286	57	2,917

It will be seen from the above table that within the space of twenty years the number of homicides has increased nearly 400 per cent; that the proportion of thirty-two homicides to each million of the population has grown to one hundred and four, and that the number of legal executions has remained substantially what it was when the number of homicides was only one-fourth as great as now. Compared with conditions in other lands, the situation in the United States, as revealed by the statistics quoted above, is not only disgraceful to American civilization, but is highly serious and deserves the thoughtful consideration of all good citizens. As against nearly 9,000 homicides in the United States in 1903, only 321 were reported in

the German Empire, with approximately sixty million inhabitants; only 322 in England and Wales, with a population of thirty-two and a half million; 526 in France, with a population of thirty-eight million, and 61 in the Dominion of Canada, with a population of five million. With 112 homicides to each million of the population in the United States in 1903, England and Wales had less than 10 (1902), France 13½ (1899), the German Empire less than 5 (1899), and Canada about 12 (1903). In the city of Chicago in 1906 one hundred and eighty-seven homicides were reported, as against twenty-four in London, with a population three times as great, twenty-two in Paris and forty-four in Berlin, including attempted murders. The worst feature about the situation in the United States is the small number of convictions and executions, the latter being but little more than one per cent of the homicides, one in seventy-three (1904), while the number of lynchings exceeds the number of legal executions. With 187 homicides in Chicago last year, there were but two cases of capital punishment, and the Cook County jailer informs me (April, 1907) that there are no murderers awaiting execution.

Annals of the American Academy. 29: 618-21. May, 1907.

Legislative Tendencies as to Capital Punishment.

Samuel J. Barrows.

Public sentiment in regard to the infliction of the death penalty in the United States shows itself both in the enactment of law and in the violation of law. In the violation of law it takes the form of lynching. It is not my purpose to speak of the lawless use of capital punishment. Two governors of southern states, Governor Jelks, of Alabama, and Governor Aycock, of North Carolina, in 1903 pointed out to their respective legislatures that lynching instead of furnishing any social protection actually becomes a great moral danger; for it leads to the taking of the life of innocent people. Mob murder is not justified by statute but little has been done by statute to prevent it. Two things are important to note in regard to it: First, that lynching does not occur in the states that have abolished capital pun-

ishment—Michigan, Rhode Island, Wisconsin, Maine. In no states is the respect for human life held more sacred by the people than in those states where it is held most sacred by the law. Secondly, as was said by Governor Aycock, of North Carolina, "the crimes for which this summary punishment is meted out do not decrease."

Setting aside these lawless hysterical spectacles of torture, the result of mob vengeance, which constitute a terrible reproach to the civilization of our country, what are the cooler, saner tendencies of modern legislation concerning the death penalty?

1. With a single exception, the states of the Union which have abolished the death penalty show no disposition to restore it. Michigan abolished the death penalty in 1847, Rhode Island in 1852, Wisconsin in 1853, Maine abolished it in 1876, restored it in 1883, and again abolished it in 1887. Thus in Michigan it has been abolished for sixty years, and in two other states for more than fifty years. During that time the conditions of civilization have been much modified in Michigan and Wisconsin, passing as they have done from the ruder conditions of frontier communities and development into states of great power and influence. Without invoking statistics as to the influence of the abolition of the death penalty upon crime, a subject outside of the special range of this article, it is sufficient to point out that these states have discovered no reason for repealing the laws which have been in existence for more than half a century. Colorado is the only state in which the death penalty has been restored. It was abolished in 1897, but as the result of a lynching outbreak in 1900, was restored in 1901, but under the amended law the jury fixes the penalty for murder as death or life imprisonment.

2.- A marked tendency in the United States is toward the abolition of public executions. Publicity was formerly regarded of the greatest importance. It gave an exemplary character to the punishment. Even after death the body of the criminal was exposed on the gibbet for weeks as a warning to malefactors. This feature, once considered important and necessary, is now regarded as more harmful to society than healthful. The practice of gibbeting the criminal has long since been abandoned;

the practice of public executions is gradually following it. As the result of a dramatic exploitation by the sheriff of Boston, of a criminal executed in the Charles Street Jail, which was turned into a vast theatre to see the execution, the people of that state, protesting against this form of legal vaudeville, enacted that all executions should be private.

Since 1903 several states have enacted laws providing that persons convicted of offenses punishable with death should be executed in the state penitentiary or under conditions of comparative privacy. New Mexico enacted that execution should take place within an enclosure before not over twenty persons. North Dakota passed a similar law. Governor Chamberlain, of Georgia, recommended that all executions should take place in the penitentiary, out of hearing and out of sight of all except officials, and such a law was passed.

Arkansas, in 1906, decided that executions should take place in the county in which the crime was committed, and also amended its law so that executions of persons convicted of rape are not to be public.

The argument for public executions at the state penitentiary was presented by Governor Beckham, of Kentucky, in his message to the legislature in 1906: "I recommend that you provide that all executions of the death penalty be done in the Frankfort Penitentiary. The hanging of a man in the community where he is tried produces a sensation, a nervousness and excitement upon the part of the people, and it has a brutalizing effect upon the large numbers, in spite of the law, who witness it."

3. Still another tendency of American legislation is to substitute the electric chair for the gallows. This was introduced first in New York and has been followed in Massachusetts, Ohio, New Jersey, and a bill to this effect is before the legislature of Minnesota. The adoption of this form of the death penalty which, for want of a better word, we seem forced to call "electrocution," is urged on the ground that it is instantaneous and therefore more merciful and is less spectacular than the gallows. It takes but small space and therefore permits more easily private execution. Other prisoners are not disturbed or excited by the erection of the gallows. All of these arguments,

it will be seen, are in the direction of softening and mitigating the harsher features of the death penalty by relieving it of all aspects of physical torture, and by removing its exemplary character. Opponents of this change have pointed out that when all these aspects of capital punishment are removed there is very little left of moral value in the punishment. But this argument has not prevented the substitution of electrocution for hanging.

4. A fourth tendency in modern legislation is to reduce the number of capital crimes. To illustrate this it is not necessary to go back a hundred years when, under English law, 200 offenses were included in the list of capital crimes. More remarkable does it appear that until 1894, under the federal laws of the United States, twenty-five offenses for which the penalty was death were catalogued under the military code; twenty-two under the naval code; under the extra-territorial jurisdiction granted to consuls by section 4192 Revised Statutes, three offenses, viz.: Insurrection, rebellion and murder, and under the jurisdiction of the civil code of the United States there were no less than seventeen, namely:

(1) Murder; (2) Murder upon the high seas; (3) Maliciously striking, etc. from which death results; (4) Rape; (5) Owner destroying vessel at sea; (7) Piracy; (8) Seaman laying violent hands on his commander; (9) Robbery upon the high seas; (10) Robbery on shore by crew of piratical vessels; (11) Any act of hostility against the United States, or any citizen thereof, on the high seas, under color of commission from a foreign state, or on pretense of such authority; (12) Piracy by subjects or citizens of foreign states; (13) Piracy in confining or detaining negroes on board vessels; (14) Piracy in landing, seizing, etc., negroes on foreign shore; (15) Arson of dwelling-house within a fort, etc.; (16) Arson of vessel of war; (17) Treason.

Through agitation, brought about by General Newton M. Curtis, in the Fifty-second Congress, in 1892, the number of offenses was reduced to three.

The special joint committee on the revision of the laws reporting to the Fifty-ninth Congress just closed a bill to revise, codify, and amend the penal laws of the United States, say in

their report: "We have abolished the punishment of death in all except three cases—treason, murder, and rape—and have provided that even in these cases it may be modified to imprisonment for life; and as humane judges in England avail themselves of the most technical irregularities in pleadings and proceedings as an excuse for discharging prisoners from the cruel rigors of the common law, so jurors here often refuse to convict for offenses attended with extenuating circumstances rather than submit the offender to what in their judgment is the cruel requirement of a law demanding a minimum punishment."

5. Finally, the culmination of modern legislative tendencies, with reference to the death penalty, is seen in the abolition of the death penalty altogether.

Governor Savage, of Nebraska, in 1903, urged the legislature to "place Nebraska among the states representing the highest types of civilization, and the teachings of the meek and lowly Nazarene" by abolishing capital punishment.

In the same year, New Hampshire abolished the death penalty for murder in the first degree unless the jury affix the same to the verdict; otherwise the sentence is for life imprisonment.

During the past winter the most conspicuous center of legislative discussion on this subject has been the French parliament. In its session of November 5, 1906, the Chamber of Deputies referred a bill for the abolition of the death penalty to a committee on judicial reforms. This committee, by a small majority, voted in favor of the abolition of the penalty; but the substitute offered for the guillotine—perpetual imprisonment, six years of it in solitary confinement—has raised many objections. At last accounts no final action had been taken. The argument for the abolition of the death penalty, accompanying the bill which was presented by Monsieur Guyot-Dessaigne, Minister of Justice, is a very effective and telling presentation of the case.

That the death penalty is not a living question in some of the other parliaments of the world is because they have actually abolished it and do not desire to restore it. Thus Russia was one of the first countries to respond to the appeal of Beccaria, abolishing it in 1753, except for political offenses. It was abolished in Portugal in 1867, in Holland in 1870, in Italy in 1880;

in the majority of the Swiss cantons; in Costa Rica, Brazil, Ecuador, Guatemala, and Venezuela. It is to be further noticed that some countries which have not formally abolished it by legislative act have, in fact, suppressed it in practice. This is true of Belgium and also of the state of Kansas.

Apropos of the discussion of the death penalty the history of the recent treatment of prisoners condemned to execution in Kansas is interesting:

In 1872 the Kansas legislature provided a peculiar penalty for murder in the first degree. It provided that one convicted of this crime should be condemned to death, but that he should be incarcerated in the penitentiary for one year before his execution, and then his execution should take place only upon the order of the executive. No governor has ever exercised this discretion by ordering the execution of any prisoner sentenced under this law; hence there have been no official hangings in this state since that time.

The recent legislature, which adjourned a few weeks ago, amended this law making the punishment for murder in the first degree imprisonment for life. There are some fifty or more prisoners in the penitentiary who come under the provisions of this law.—(Editor.)

X **Annals of the American Academy. 29: 622-5. May, 1907.**

Capital Punishment and Lynching. J. E. Cutler.

The attempt has often been made to prove from the statistics of crime, and of the legal action taken against criminals that, on the one hand, capital punishment has no deterrent power and, on the other hand, it prevents the enforcement of law because conviction is rare in cases which involve the death penalty. It is obvious, however, to any one who has examined the available statistics of crime and its punishment, that the validity of such statistical conclusions is open to some question.

The plea for the abolition of capital punishment is most effective and conclusive when made, frankly and avowedly, on

X the ground of humanity and of what may perhaps be properly termed abstract justice. The conviction that capital punishment ought to be abolished has its origin primarily in humanitarian instincts, and the most effective arguments that can be advanced in favor of this action are those that make direct appeal to the humanitarian impulses and sympathies. It is then pointed out that human life is too sacred a thing to permit of its being destroyed as a penalty for any crime whatever. It is argued that two or more men, organized under a form of government, or acting under the authority of a government, have no more right to take human life than one man has. It is murder in either case and brutalizing in both. Furthermore, it is argued that capital punishment prevents reparation in cases of subsequently proven innocence. It is said also that capital punishment is a relic of barbarism. As civilization has advanced, punishment has always become less severe. The old law of retaliation is now obsolete.

But, admitting the strength of this appeal, humanitarian impulses and considerations of abstract justice cannot be accepted as the sole criteria in the formulation of a criminal code. These motives and standards are wisely followed only in conjunction with the modifying influences of existing conditions. A criminal code, to be effective, must be constructed with regard to the circumstances and conditions that prevail within the territory of its application. There is no such thing as a universal criminal code, one that is equally applicable to all parts of the world, to all peoples and to all stages and varieties of civilization. Unless the code of the criminal law is sufficiently adapted to the character and composition of a particular group, to the social and ethical standards of the citizens of a particular country or community, it will prove unenforceable and peculiarly ineffective.

A noteworthy illustration of this fact is to be found in connection with the history of the lynching of negroes in the United States. In the midst of the increased criminality that has been manifested among the negroes since emancipation, the Southern whites have found the law and its administration utterly unsuited to the function of dealing with negro criminals—hence, the frequent adoption of summary and extra-legal methods of punishment.

It was assumed, after the emancipation of the slaves, that a judicial system, adapted to a highly civilized and cultured race, would be equally applicable to a race of inferior civilization. It was not then recognized that it is really a serious question whether two races, differing as widely in physical and mental characteristics, in their interests and attainments, as do the negroes and the whites, can occupy the same territory and live side by side in peace and harmony, on terms of equality, under a legal system that has been worked out and established exclusively by the more highly civilized and more cultured race. The failure to recognize this fact, and the failure to make special provision for the control of the negro population during the reconstruction period in the South, constitute the fundamental reasons for the disrepute into which legal procedure has fallen, as regards negroes accused of offenses against the whites.

We are just beginning to realize that if the lynching of negroes is to cease, there must be much less reliance than in the past on abstract principles concerning the rights of man, regardless of his training and his capacity. The great mass of the negroes, the negroes as a race and people, have not the same standards as the whites, either intellectually, morally or industrially. Measured by the white man's standard of judgment, the frequent atrocity of the crimes committed by negroes of low character, without apparently any particular provocation, is something scarcely to be understood—the adjectives wanton, bestial, outrageous, brutal and inhuman, all seem wholly inadequate to express the feeling of utter disgust and abhorrence that is aroused. It is this inability to understand the motives, impulses and characteristics resulting in heinous crimes by negroes, which affords some explanation of the tendency to adopt heinous methods of punishment for the perpetrators of these crimes—such as burning alive with attendant tortures and cruelties. The fact is lost sight of that the colored race in the United States is a child race, in the sense that it is attempting to accomplish, by absorption in the course of a generation or two, all that the white race has been able to develop and establish only after centuries of effort. In the matter of the administration of justice, in cases where negroes are concerned, the

line of action followed by the whites in recent years has been similar to that of the unreasonable father, who talks to his child and lays down rules of conduct for him, on the assumption that the child has all the experience and maturity of judgment of an adult, and then punishes him with capricious and savage severity when he disobeys or fails to attain the standard that has been set for him.

Under such circumstances it is not the part of wisdom to abolish capital punishment. The presence of racial contrasts in the population of the United States, particularly that between the negroes and the whites, must not be omitted from consideration in the legal treatment of crime. Experience has shown that it is extremely difficult to secure an invariable observance of due process of law in this country, especially when heinous crimes are committed that cross racial lines. If there be no death penalty that can be invoked by law under such circumstances, it is commonly assumed that there is ample justification for action outside the law.

One instance may be cited where apparently there was a direct connection between the abolition of capital punishment and recourse to lynchings. The legislature of Colorado, in the year 1897, adopted a measure that abolished capital punishment in that state and provided that every person convicted of murder in the first degree should suffer imprisonment for life at hard labor in the penitentiary. In the year 1900 there were three lynchings in the state, all the victims of which were charged with murder. Two of the victims were negroes. One of these negroes, who was lynched on November 16, 1900, was charged with the assault and murder of a twelve-year-old girl. He was lynched publicly by burning at the stake in the presence of some three hundred citizens, and it was stated that he was brought to the scene of the lynching by the sheriff who had him in custody. The newspapers of Colorado thereupon unitedly made demand that the next legislature pass a bill legalizing capital punishment. The spirit of the demand is expressed in the following: "If that bill had never been repealed, there is a general public opinion that the causes for the various lynchings that have taken place in this state would not have existed."

At the next session of the legislature the act of 1897 was repealed, and it was provided that when a person was found to be guilty of murder in the first degree, the jury, in its verdict, should fix the penalty to be suffered, either at imprisonment for life at hard labor in the penitentiary or at death by hanging. Since 1901, therefore, it has been the law in Colorado that the perpetrator of a heinous crime shall, upon conviction, receive, in the discretion of the jury, either the sentence of death or of life imprisonment. A possible excuse for lynching, on the ground that the guilty person cannot be adequately punished under the law, has thus been removed, and at the same time one frequent objection to the legal infliction of the death penalty has been answered by a provision that no account of the details of the execution shall in any manner be published in the state.

It is not possible in very many cases to show that the appeal of the death penalty has thus directly promoted lynchings. In general, however, the history of lynching in this country furnishes evidence, which may be accepted as fairly conclusive, that for certain crimes, no legal punishment other than ignominious death to the perpetrator, can satisfy the popular sense of justice or receive the effective support of public opinion. So deeply rooted in our American life and spirit has this practice of lynching become, that only a very slight excuse, a mere shadow of a justification, is necessary to induce private citizens to take the law into their own hands under any circumstances which appear to be especially exasperating. In the mind of the average citizen what is conceived to be the enormity of the crime committed and the depravity of the accused completely overshadow all other considerations. To a considerable degree lynchings represent an attempt on the part of private citizens to inflict a penalty that in severity will be proportionate to the heinousness of the crime committed.

In following the lead of the humanitarians, therefore, and in accepting the principle that has been laid down by the penologists, that the penalty must be fitted to the criminal rather than to the crime, it must not be forgotten that the foundation of the law of retaliation is laid deep in human nature and primitive tradition. It is not too much to say that to abolish capital punishment in

this country is likely to provoke lynchings. Whenever unusually brutal and atrocious crimes are committed, particularly if they cross racial lines, nothing less than the death penalty will satisfy the general sense of justice that is to be found in the average American community.

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Homicide and the Death Penalty in Mexico.

Maynard Shipley.

In Mexico, as in the United States, each state reserves the right to enact its own penal laws, and in accordance with this constitutional prerogative, the states of Campeche, Yucatan and Puebla long ago abolished the death penalty, a movement followed more recently by the legislators of Nuevo-Leon. It is the general opinion of jurists and criminologists in Mexico that the death penalty is justifiable only under martial law, or when suitable places of detention for criminals are not available.

Comparison of the judicial statistics of the states, wherein the death penalty is abolished with others in which capital punishment is still prescribed, shows that human life is fully as safe in the former as in the latter states. In the state of Campeche (with a population of about 90,000) there were but seventy-one persons convicted of homicide during the fifteen years 1871-85. In Yucatan (with a population of about 393,000) the number of convictions for homicide during the same period was 336. On the basis of the population of 1882, the annual average of convictions for murder and manslaughter in both Yucatan and Campeche was but 5.5 per one hundred thousand of inhabitants. For purposes of comparison, it may be stated in this connection that the annual average of convictions for homicide in the Province and City of Buenos Ayres (where the death penalty has always been enforced), is 11.5 per one hundred thousand of population; in Paraguay, the annual average is 6.1; in Uruguay, 25.5; in Italy, 7.6; in Spain, 5.9 per one hundred thousand of population.

The table below shows the number of convictions for murder and manslaughter in the states of Yucatan and Campeche during the fifteen years 1871-85, given in quinquennial periods, with the annual averages (based on statistical data derived from an offi-

cial document compiled by Dr. Antonio Peñafiel, and published by the Mexican government in 1890):

	1871-75.	1876-80.	1881-85.	Annual average
Yucatan	97	129	110	22.6
Campeche	21	21	29	4.1
Annual average in quinquennial periods.....	19.4	23.8	22.0	.....
	4.2	4.2	5.8	.....

The figures above show that the advance of civilization in Mexico has been attended with a slight increase in the number of convictions for homicide in these two states; this does not, however, imply a greater number of homicides committed, but rather greater certainty in the detection and conviction of and for crime.

Statistics of convictions for homicide in Puebla cover only the four years 1881, 1882, 1883 and 1885, but Señor Emilo Alvarez, Procurador-General of the Federal District, and author of the latest statistical work on Mexican criminality, assures the present writer that there is nothing to indicate that human life is less secure in Puebla than in the states wherein the death penalty has not been abolished, "For it is easy to see," says he, "that security depends on many causes foreign to the application of the death penalty."

The table below gives the number of convictions for certain crimes committed in the state of Puebla during the four years named:

OFFENSES

YEARS	Murder	Manslaughter	Parricide	Infanticide	Inflicting grave wounds	Inflicting minor wounds	Robbery with violence	Robbery without violence
1881.....	3	207	.....	3	45	1,113	971	87
1882.....	1	254	.....	10	16	1,337	725	80
1883.....	1	250	.....	9	9	1,153	629	94
1885.....	2	208	1	7	7	957	600	60
Totals.....	7	919	1	29	77	4,560	2,928	321

Although capital punishment was practically abolished in Nuevo-Leon many years ago, it was not legally prohibited until 1905. There have been but three executions in that state since 1885, though the number of culprits condemned to be shot (the Mexican method of inflicting capital punishment) during the seventeen years ending in 1905 was thirty-one. On the basis of the population of 1900 (326,940) there were, during the same period, in the state of Nuevo-Leon, 0.61 death sentences annually in each one hundred thousand of population. The crimes punishable by death during this period were treason, premeditated murder, incendiarism, highway robbery, piracy, parricide, and "holding up" a pedestrian in the streets or roads.

Mexico has the same number of states in which the death penalty has been legally abolished as have the United States, and also one state which offers an exact parallel to the state of Kansas, where death sentences are regularly pronounced which everybody knows are never to be executed. During the eighteen years of Governor Villada's administration, in the state of Mexico, only two capital sentences were carried into effect. The official statistics show that no evil results followed this policy of executive clemency. During the five years, 1897-1901, Governor Villada had occasion to grant (on an average) but six commutations yearly, in a population of about 900,000, or 0.7 per one hundred thousand of population. It will be remembered that the annual average of death sentences in Nuevo-Leon was 1.8, or 0.61 per one hundred thousand of inhabitants (on the basis of the population in 1900, which was 326,940).

In the state of Vera Cruz, also, the death penalty is so seldom applied as to be practically inoperative. "In almost every state in the republic," writes a native authority, "legal executions are authorized, but, except in the case of soldiers, there is every chance that the sentence pronounced may be changed before the date of execution, to imprisonment for twenty years. This is the limit of imprisonment that may be pronounced for any crime. It is supposed that a man will either be dead at the end of that time or so harmless that he may be permitted again to enter society."

Passing now to the federal district, we find that here, too, capital punishment is practically abolished for all but grave crimes of the military order. Though homicide is of deplorable frequency among the lower classes of the capital (70.72 per one hundred thousand of population in 1899), no ordinary criminals have been executed in the federal district for about fourteen years. To quote an anonymous writer in a Mexican journal:

"In the courtyard of Belem the wall against which the condemned men were stood is scarred with bullet marks, but prisoners have ceased to regard it with the terror they once might have felt, and prison officials have fallen into the habit of regarding it more or less as a curiosity rather than as a part of the working machinery of the institute. Possibly no man condemned to death can rest with assurance that by exercise of official clemency he will escape death, but it is doubtful if there is an attorney in the country who would not feel almost confident that in the end he would obtain for his client a commutation of the sentence to twenty years imprisonment."

President Diaz expresses himself as being quite willing to substitute imprisonment for the death penalty if the experiment now in progress proves successful. That the death penalty was regarded by the Mexican jurists as a merely temporary makeshift, useful in the absence of a properly equipped penitentiary, is implied in the paragraph on this subject in the federal constitution, which read as follows (Art. 23):—

"Pending the abolition of capital punishment, it remains in the charge of the administrative power to establish, as soon as possible, the penitentiary regime. In the meanwhile it is abolished for political crimes, and cannot be extended to any other cases than to the traitor of the country in a foreign war, to a highwayman, to an incendiary, to a parricide, to a homicide when accompanied by treachery, or premeditated vengeance, to grave crimes of the military order and to those of piracy, which the law will define."

That death sentences are not usually carried out in the federal district may be seen from the fact that of 246 applications for executive clemency during the twenty-one years, 1881-1902, only twenty-one were refused.

The fact that capital executions are becoming more and more rare in the federal district would seem to indicate that the abolition of the death penalty in Mexico has been attended by no evil results, a conclusion justified by the facts. Notwithstanding the increase of population during the last twenty years, the number of convictions on capital charges in the federal district during the decade 1881-90, was 110, while there were but 122 during the decade 1891-1900. In 1899, with a population of 500,000, there were sixteen capital sentences pronounced.

In regard to the history of homicide in Mexico as a whole, no statistics have been published since the year 1890. The report then published shows that murder had been constantly on the decrease for the fifteen years ending with 1885, despite the fact that the proportion of capital executions to homicides committed was growing smaller and smaller year by year.

When it is considered that the court records are avowedly incomplete for the years preceding 1879, it is apparent that homicides in Mexico are decreasing both in actual numbers and in proportion to the population. Previous to the advent of the railroads and telegraph many crimes of violence escaped the notice of the authorities, and the apprehension even of known murderers was an exceedingly difficult task. During the last seven years of the period covered by the above statistics the police force of the republic was being constantly augmented, and the service and discipline improved, while the population increased by about two and one-half millions; yet the annual number of capital sentences pronounced diminished year by year, the records showing 216 for the eight years 1871-78, and 211 for the eight years 1879-86. Homicides, as the results of quarrels and drunken brawls, among the lower classes, are still deplorably frequent in Mexico; but premeditated murder, perpetrated with a view to robbery, or murder accompanied by treachery, and highway robbery are becoming of relatively rare occurrence. Only a few years since no one could safely walk the streets of the capital after nightfall. "One may now traverse this city from end to end at any time, night or day, without any fear of being molested," writes Mr. John Hubert Cornyn. Meanwhile, capital punishment has been

practically abandoned throughout the republic. A native writer declares: "Unless there occurs some check to the growth of the feeling of revulsion against capital punishment, the next generation in Mexico is likely to glean all its information regarding that interpretation of justice that demands 'a life for a life' from history or from reports of legal executions in other countries."

The table following shows the annual number of convictions for various forms of homicide in the republic during the fifteen years 1871-85, with the annual number of death sentences pronounced.¹

OFFENSES

Years	Murder	Man-slaughter	Parricide	Infanticide	Death sentences
1871.....	375	987	7	87	41
1872.....	404	927	4	53	23
1873.....	408	969	5	39	30
1874.....	448	1,240	9	58	23
1875.....	401	1,062	3	50	18
TOTAL.....	2,036	5,185	28	287	135
1876 ²	461	1,099	5	42	26
1877.....	440	1,106	9	41	12
1878.....	642	1,252	10	61	43
1879.....	594	1,321	15	98	29
1880.....	486	1,182	15	71	28
Totals....	2,623	5,960	54	313	138
1881.....	615	1,447	14	96	30
1882.....	533	1,322	13	85	20
1883.....	627	1,349	18	83	36
1884.....	528	1,322	10	61	24
1885.....	532	1,315	18	62	18
Totals.....	2,835	6,755	73	387	128
TOTALS IN QUINQUENNIAL PERIODS					
1871-75.....	2,036	5,185	28	287	135
1876-80.....	2,623	5,960	54	313	138
1881-85.....	2,835	6,755	73	387	128
Grand Totals	7,494	17,900	155	987	401

¹ Statistics for Puebla are not included in the above table, figures for this state not being available.

² During the civil war of 1876 and 1877 many of the archives were destroyed. Since 1878 the archives have been in perfect order.

Arena. 2: 513-23. October, 1890.

Death Penalty. George Shrady.

The execution by electricity which has recently taken place has brought to the surface a general discussion of a subject of the greatest concern to society at large. Upon the electric chair at Auburn was focussed the high light of a world-wide interest. It was promised that the new method of getting rid of a murderer should be an improvement upon all others. History must now record its failure from many points of view. When the harrowing details of the death chamber were tingled along the telegraph wires of the country, and their impluses were throbbled through the cable, the entire civilized world viewed the scene with astonished horror. The criminal became a martyr and the manner of his execution was anathematized by the daily press as a disgrace to civilization. He came to it submissively, trusting to an easy death, but was killed like a writhing dog. He kept his promise to do as well as he could, and the only mercy was that he was rendered unconscious from the first. Viewed even as a scientific operation, however, it transcended in apparent brutality anything that can be imagined. And yet this was claimed to be the true and improved way of doing it. This, too, after all the discussion by expert electricians, after all the experiments upon the lower animals, after the careful examination of the power of different machines, the accurate measurement of volts, the elaborate estimation of resistance to currents, and the exhaustive study of the generating power of different dynamos. It was the first dreadful trial on a human being to measure the terrible force of quickly repeated lightning strokes against his vital tenacity. Seemingly every precaution had been taken to make the result a certainty, when exactly the opposite was proved.

As now shown there was no accurate and reliable way of determining positively when real death occurred. None of the experts dared examine the victim while the deadly current was coursing through its circuit. No one could go near to feel the pulse, or to listen to the heart beat. All the chances were taken upon the actual number of seconds required to make life extinct.

That there was an error of judgment in that regard was shown in the respiratory struggles of the criminal after the first shock was administered. Although there was no more pain or agony during these efforts than if the man had been under the influences of an anæsthetic and had been undergoing a severe surgical operation, there was scarcely less doubt, under such conditions, that he might not have rallied if the shock had not been repeated. Viewed from such standpoints it can hardly be claimed that the first use of electricity as a means of producing death easily, quickly, and as some have claimed "pleasantly," was, by any means, a success. All this was done for the sake of making an improvement upon the other forms of execution. When, however, we compare electricide with these, we are forced to admit that it utterly failed to meet the extravagant claims of its advocates. X The scene in the death chamber was well calculated to impress any impartial observer with this fact. For the poor victim's sake we are glad to believe that he suffered no pain, but at the first stroke he was simply shocked, not killed, then after a torturingly long interval the shock was repeated and continued, until the burning flesh of his back demonstrated that the sacrifice had been complete. From the administration of the first stroke until the second circuit was finally interrupted, five minutes and twenty-eight seconds elapsed. In view of these facts it can hardly be said that the execution was a speedy one, certainly not as quick as lightning. That the murderer suffered nothing is no argument in favor of the apparent brutality of failing to kill him at the first blow, then striking him again and accidentally roasting him afterwards. The start was well enough, perhaps, but who can contemplate the finish without a shudder. X The only comfort those can take who have advocated the new plan, is that the first current was a stunning one. But in the other methods of inflicting the death penalty is there more suffering?

Excepting perhaps the Russian plan of execution by the knout—beating the life out of the victim with a loaded lash—the dreadful element of pain to the individual is hardly worthy of consideration. The guillotine is certainly very rapid in its action, and, as far as can be judged by analogy with similar phenomena

all sensation is abolished on the instant of the stroke. The communication with the pain centers is at once cut off, and the sensation current is instantly interrupted. The only revolting part of the proceeding is the necessary shedding of blood; but this, scripturally speaking, should render the killing contract more valid. As to rapidity and effectiveness the same thing is done with the heavy Japanese sword, and with scarcely less precision. The Spanish garrotte crushes the cervical spine and upper spinal cord by means of a screw quickly working through the back of an iron collar. Death here is practically instantaneous. The same may be said also of hanging. The instant the noose tightens its choking grip, consciousness is gone. The contorting spasms of the larger muscles are merely involuntary movements that have no connection with appreciable pain. At least, this is the testimony of men who have been cut down while insensible from attempted suicide by such means, or who have been similarly rescued from accidental hanging. When there has been a bungling, the rope should not be blamed. Even the electric chair may not have had its chance.

The objection to hanging on the grounds of simple humanity has been that some moments must elapse before actual death can be a certainty. When the neck is not broken (and this is the rule), the heart continues to beat in a more or less irregular manner for several minutes after the suspension. But if the hanging is properly done, death is always sure and there are never any attempts, reflex or otherwise, at respiration. The victim, free from pain and absolutely unconscious after the first convulsive throes, swings motionless in mid air, a limpid nothing of humanity. Unconsciousness and consequent loss of sensation are in such instances evidently due to the combined effects of the shock of the fall and of the congestive brain pressure caused by the grip of the noose.

Of the five forms of execution now in vogue, that adopted by military tribunals is often open to the most objections. The bullet oftentimes misses its aim and a vital part is not always struck. There is a sentiment associated with dying a soldier's death that cancels in a measure its otherwise revolting aspect.

It is well-known that no individual of the firing squad is aware that his particular rifle is loaded with ball and he naturally hopes it is not. There is never a heart in the work of shooting a comrade. The aim is almost purposely wide of its mark and consequently with a risk to the condemned man, of pain and suffering when death is not speedy. In times of war, when military executions are most frequent, the life of an ordinary soldier is of such small value that little if any attention is given to technical details, and still less is any criticism invited as to the mere humanity of the proceeding.

In studying the technique of executions it is interesting to note a desire on the part of those who believe in these forms of punishment, to inflict as little suffering as possible upon the condemned one. This is as it should be and is so far a credit to our present civilization. Those who hold a contrary view are happily in the very small minority. There is only pity for such a claim that the more severe, revolting, and cruel we make an execution, the better will it serve its purpose. It is to be regretted, in this age of enlightenment, liberality, and progress, that even clergymen should be found among the staunch advocates of this obnoxious doctrine. By their training and mission it would be quite reasonable to expect from them something in advance of the religion of the fire and sword. Thinking men now ask a better argument for revenge than the quotation of a text or the literal interpretation of a scriptural injunction. Strange to say in a newspaper column of personal interviews representing the opinions of scores of leading preachers there was scarcely a man among them who was not in favor of some form of capital punishment, and not one who was not willing to advise it as a last and effectual remedy for murder. Such conclusions are, to say the least, sorry comments upon a gospel which for nearly nineteen centuries has lent its best efforts toward Christianizing humanity. X "But," say the advocates of this doctrine, "executions are highly beneficial in that the very horror which attends them acts as a direct preventive of similar crimes in others. Capital punishment has a direct deterrent effect upon murder. This is its chief, if not only aim." Let us candidly enquire if this is

really so. How much of truth and fact is on their side?

Viewing this question of the death penalty in its broadest sense, we are led to look at it from many aspects. What effect, for instance, has it upon a murder already committed? It certainly does not cure the crime. That is past cure. The deed is done and the victim is beyond help. We cannot remedy one murder by committing another. Whether this is under the sanction of law or not does not alter the principle upon which this so-called justice is founded. Retribution in this sense is but another name for revenge. When we stigmatize it thus, we approach the real point at issue. Society has no more moral right to take this punishment upon itself than has an individual who is the nearest of kin to the victim. The law holds the matter in its own hands on the plea that the murderer shall have a fair trial. So far there is a show of justice in the proceeding; but if found to be guilty, the result to the culprit is the same. Society then simply revenges the death, instead of allowing any single individual to do so. So far as the criminal is concerned, we have done nothing more than kill him. (It has been an eye for eye, a tooth for a tooth, a life for a life. The account in this respect is squared up,—blood for blood. The crime of murder is expiated—technically and judicially speaking, remedied.)

To such as believe in the deterrent effect of execution it may be well to consider the uncertainty of convictions for murder. It is fair to presume that the reasonable hope of escaping the gallows offsets in no small degree the fear of it. No sooner is the crime committed than the legal adviser is consulted, and, in the majority of cases, fulfils his promise to obtain a verdict of acquittal. Conviction thus becomes the exception rather than the rule. The criminal classes know this and act accordingly. An experienced criminal lawyer of New York is quoted as saying that of nearly six hundred cases of murder of which he was the counsel, scarcely a score were punished. The lesson which this teaches cannot be misinterpreted; the criminal who is actually sentenced and executed, is looked upon more as an unfortunate victim of the law than one who justly deserved his punishment. He has a funeral largely attended by sympathizing friends who

never tire in praising his noble, plucky, but untimely death. He is the hero of the hour, with virtues that invite emulation, rather than the criminal whose disgraceful end should be a lasting example to all evil doers. Of course it is hardly to be expected that the murderer should confess his guilt. He thus leaves nothing behind him for good. He simply goes to glory an innocent man and the hanging lesson thus endeth. A lie is, to all intents and purposes, not a lie when uttered under the gallows. A murderer facing death is the last person in the world from whom a good moral precept can be extracted. As an example he is by no means a success, and consequently has no very striking deterrent effect upon the community. What could be expected from hanging what the victim says is an innocent man? We get him out of the way in a very radical manner, to be sure, but do we do so as a warning to others of his ilk? Do they profit by it? Take up the morning papers and read of murder everywhere. In the next column to the report of the execution is that of an assassination in broad daylight and in a public thoroughfare. The execution was horrible, so was the new murder. They occur entirely independent of each other, it is true, but the coincidence is quite striking enough to shake our faith in the deterrent theory. Even to ordinary observation it is quite evident that murders are not on the decrease; on the contrary, if we interest ourselves enough to count them as they are reported almost daily, we are inclined to take the opposite view. If, however, we attempt to solve the reasons for the commission of crime as we would any other problem and look for an explanation of apparent inconsistencies, some very interesting and instructive explanations offer themselves. And, strangely enough, all these facts are directly opposed to the ordinarily accepted doctrine of prevention; in truth the fear of death by execution is so far in the background as hardly to be worthy of consideration. To properly appreciate their significance we must study the philosophy of crime not only as regards the individual criminal, but also in his relation to society.

X Let us get at this part of the question as directly as possible by asking, what is murder? In the vast majority of cases it is

an accident of passion in an individual who has lost his self-control. He is in ninety-nine cases out of a hundred a weak vessel, a crooked pot that has been jarred out of his equilibrium. He tumbles over and we smash him in pieces accordingly. He was born crooked; we are hardly prepared to discover that the criminal is born not made. But this can be proved to be true, nevertheless. There is as much heredity in crime as in consumption, cancer, or insanity. The statistics of prisons show that crime in one shape or another can trickle through families even to the sixth generation. With insanity this is notoriously so. The records of our insane asylums are filled with such histories. Occasionally the criminal proclivities, eccentricities, and other mental defects of ancestry are the subjects of legal inquiry before the courts, but as this is done more to prove hereditary insanity than to excuse crime, sociologists have been compelled to look to other sources for their data. The criminal belongs to a class distinct in itself, which has its own peculiarities, its own statistics, its own laws; and its well-defined relation to society. He comes into the world with a defect in his moral constitution and unless this is counteracted by the proper educating influences, he is in the long run as sure to commit crime as are the sparks to fly upward. The seed always produces its kind in the proper soil. The criminal will always fit his environment. The murder, for instance, is the fruition of the seed in the proper ground. The act is almost an instinct of his living. To prevent it would be to kill him before, not after it is done, or, better still, we should be able to forbid the matrimonial bans of his ancestors. All this goes to show how far back lie the causes of the crime. It is a latent principle in his very blood that awaits the ferment of unguarded passion.

These seeds of crime are being sown constantly in our midst, and in the present state of society such will be the case, do what we will to prevent it. We can no more guard against this condition of things by executing criminals than we can by destroying the fruit of one seed hinder other and similar seeds from taking root. We are thus attacking the effect rather than the cause. But the real cause in the individual is mostly be-

yond our reach. We have no means of knowing his proclivities towards murder until the deed is done. Even if it were otherwise the gallows would have no more terrors for him than for any other man. Until after the murder is accomplished he has been accustomed to believe that the guillotine or the rope was intended for some one else. No individual, no matter how depraved he is, ever expects to be a murderer, and, consequently, he never feels the need of the lesson from the scaffold. If he learns it at all, it is too late either to do any good to his victim or himself.

We say that it is necessary when deeds are done that man should fit his environment. It is quite true that society in its retroactive influence has as much to do with the commission of the crime as does the criminal. There is a social as well as a physical law for crime. Given a certain condition of society and the ratio of murders is always the same, no matter how severe the punishment for the crime may be. The mere fear of the death sentence apparently has no effect upon the would-be-criminal. If it were otherwise, we should expect a proportionate decrease in the number of murders committed as compared with the number and severity of the executions. But, strangely enough, the number of murders never varies. It is as constant as the birth rate and the death rate. We have an individual with certain instincts on one side and a certain condition of his surroundings on the other, and we predict the result with a mathematical certainty.

It may be a comforting thought that crime is prevented by punishment, that a great many who might be murderers are deterred from becoming such by the death penalty, but we have no means of proving it. It is hard to estimate how a thing which does not happen is prevented from happening. When we argue from such premises we are swinging around a circle of negative proportions. When, however, we start from a fixed point, when we actually know the exact rates of certain crimes, we expect if there is any good in certain so-called deterrent influences, to see the results in lowering the crime record. If the fear of death has had any real influence in that direction, it

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should have shown itself long ago. It has had no effect on the criminals who crop up year after year, keeping the roster full. Why did not the last murderer fear the gallows in time to avoid it? We know he did not, that the next criminal will not, and yet we go on talking of the necessity for capital punishment. If fear of the death penalty deserved a tithe of its claim as a preventive of murder, the crime would long ago have been banished from the face of the earth. It should certainly have proved its utility by this time. No matter what theory may be advanced as to the prevention of murder, it is quite evident that the fear of execution is not one that can be demonstrated by the facts of experience. So far as we can see, the dread does not show itself until the criminal cools his passion and has opportunities for reflection.

Naturally at this stage of the discussion comes the question, Why kill the criminal at all? If society wishes to enforce the estimation of the value and sanctity of human life, why does it take life itself for any reason? Even an enlightened and powerful commonwealth has no excuse for allowing two murders for one crime. If we really desire to show our horror of killing, we should have it understood by word and act that so precious is human life that even the murderer shall not be deprived of it.

When we are unable to prove that execution has a deterrent effect upon murder, when we do not wish to have it said that such a punishment is dictated by revenge, the real question narrows itself to that of protecting society by doing away with the criminal in the simplest and most effectual manner. Practically in the present state of our knowledge everything must turn upon this. But must we necessarily kill him to get rid of him? Life imprisonment becomes the only satisfactory solution to this problem. Society by such means absolves itself from the crime of a second murder, and as securely guards itself from future harm as if the criminal were dead already. The culprit is simply left to his own punishment, which is ample and severe enough. What, indeed, is more dreadful than the remorse of a blighted life; what greater torture could be devised by the

most revengeful man? ✓ No argument is needed to prove this. History and fiction vie with each other in depicting the horrors of a bad conscience. The most thrilling terrors have it as their dark background. It is the cold shadow by day and the black wing by night. ✕ There need be no fear on the part of those who even believe in the severest measures on punishing murder that imprisonment for life is not sufficient. ✕ Even the majority of criminals prefer hanging when they know that this form of confinement is sure. In order to be effective, however, it must be so. ✕ The conviction of the murderer must be certain. Let the trial be as thorough as law and justice can make it, but let the sentence be final, without the chance of technical appeal, executive clemency, or other hope for pardon. Let the criminal know and feel that there is nothing for him outside of his cell, that he is as dead to the world as if he had swung upon the gibbet. When he is made to realize this, he has the mark of Cain upon him, and his punishment is as great as he can bear. It is not difficult to imagine that the knowledge of such a fate awaiting the wrong doer would have a far more deterrent effect than the most horrible execution imaginable. ✕ It has been often said that you cannot put a man to a worse use than to kill him. This is eminently true, even with a criminal. Something good can be obtained from the most depraved characters. They can at least be made to work and thereby benefit society. Better still, perhaps, they may be forced to support by their labor the family of their victim. ✓

✕ Viewing the murderer as a bad man and one who is in danger of contaminating his fellow prisoners, it would be necessary to keep him by himself—a moral leper from whom others should be protected. An effectual way of accomplishing this would be the construction of prisons in each state solely for murderers, and the placing of them in charge of experienced disciplinarians, who should have ample powers for carrying out the strictest letter of the law.

Scientifically speaking, if such prisons were established, much good might be gained by the study of criminal character. Everything is to be learned in this direction if we would gain a

rational insight of the causes and prevention of crime. The want of some positive knowledge on these points explains, in part at least, the reason why we still kill murderers. We should study their characteristics as we do the symptoms of a disease, as we do fevers in our hospitals and insanity in our asylums. What valuable statistics could thus be obtained if the hereditary predispositions that worked their sad result in each case could be properly classified, if the influences of particular environments upon the individual could be carefully noted and if the varied psychological processes which made murder almost a foregone conclusion could be rightly understood; we could thus make an autopsical examination of the dead character as effectually useful in the collection of trustworthy data, as we could a similar study by the use of the dissecting knife upon an equally veritable cadaver. (Let us punish the criminal if we will; let us brand him with his mark; let us show, if you please, that society is outraged by his doings; let us make his punishment as severe as possible and thus deter others from crime if we can,—but while we are looking for more light let us study him, not kill him.) There are laws for crime which are as well founded as those for the winds, the tides, light and darkness, birth and death, even suicide and so-called accident. The whole philosophy of jurisprudence must be based upon a proper understanding of them. Exhaustive statistics are at hand waiting for the earnest student to marshal them in the lines of legitimate deduction. We may yet discover where the real responsibility for crime belongs; we may be able in time to demonstrate which is most to blame, the instincts of the criminal or the influences of the society in which he lives and moves. But what if in the end society itself were found most at fault in the first as well as in the second killing? What new application could then be made for the deterrent doctrine with the blood-cry of the common murderer in our ears? How could justice strike the balance? On which side would the weight of censure be placed? Might not even the death chair itself be the fitting judgment seat from which to pass the sentence?

Canadian Magazine. 2: 467-75. March, 1894.

Death Penalty. John Ferguson.

The state is the sum total of the will of the people; and as such has no feeling one way or the other in this matter. The duty of the state is to do justly in all things pertaining to the weal of every citizen. Viewed from this standpoint, the state has some important functions to fulfil.

One of the first problems the state has to solve is to allot to each offender a punishment suitable to the crime and the nature of the criminal. This latter aspect of the case must never be lost sight of. The recidivist must be treated in a very different manner from the person who for the first time commits some petty offence. The punishment should be adjusted to the person rather than the crime. . . . Among the hardest criminals to reform are vagrants and habitual drunkards. On the other hand, among the most easily reformed are persons who have committed a serious crime under conditions that might never recur. Clearly then, the duty of the state is to fit the punishment to suit each case, and the basis for this adjustment must be the offender—not the offence.

Charities. 15: 248-9. November 18, 1905.

Capital Punishment Denounced.

Blood and flame, an eye for an eye, a tooth for a tooth, talon and claw—these old watchwords of primitive retaliation were made use of in a scathing arraignment of capital punishment in the report of the Committee on Enforcement of Law, of which Dr. William O. Stillman of Albany is chairman. In part he said:

"This committee desires to draw renewed attention to that well-known and justly lauded principle developed in the modern '*enforcement of law*' which seeks the reformation of the criminal for his own good, as well as for the benefit of society, rather than the exhibition of mere legal revenge or even exemplary punishment which has been the prolific mother of habit-

ual criminalism. We cannot be too thankful that the old theory of criminal law, which was in primitive states largely retaliatory and in more advanced forms of government becomes punitive or exemplary, is rapidly becoming obsolete. We think that penologists are every day realizing more strongly the futility of the severe treatment of prisoners. The law of the moral world is like that of the physical and intellectual. Like begets like. Savagery begets savagery. Legal brutality educates a brutal populace. What chance is there for reform of an evil-doer if you have destroyed all his self-respect and caused him to harbor resentment instead of proper hopes and ambitions?

X "A great blot still lingers on our conception and practice of criminal law. It is an example of primitive retaliation, of an eye for an eye and a tooth for a tooth; a relic of a remote past when talon and claw were the only law, a theory in our enlightened times as indefensible in its principle as it is useless and debasing in its practice. The infliction of capital punishment, which is practically limited to homicides in civilized countries, is a stain on our civilization and should be abolished. In its place, when habitual and desperate criminality has reached the limit fixed by a wise and tolerant society, should be substituted special prisons which should become permanent repositories for these lost members of mankind. These should be rendered as silent and inexorable as the tomb. Release should be permitted only upon action of the highest court upon positive proof of innocence. The inmates should be forever removed from a continuance of their evil practices but not beyond the opportunity for repentance and spiritual expiation.

"It is a law of human development that severe punishment does not reform or deter. It does not change character or belief. It does not produce that conviction of mind which is essential for moral elevation. On the contrary, it excites reaction, a reflex hardening, an antagonism, and so defeats its own purpose. Who ever heard of physical abuse or persecution, however extreme and rigorous, stamping out a righteous cause or an evil cabal. Reformations, political or religious,

have ever flourished best on the blood of their leaders, and vice has waxed under the shadow of the gallows. Each extreme has had its martyrs to the wild beast in the spirit of man. Blood and flame have ever been impotent against that impalpable thing, a condition of mind. Progress, purity and peace, must come from the heart and the intellect developed in conjunction. Violence cannot reach the fountains of right living.

"The arguments against capital punishment may be summarized as follows:

"1. The strongest argument is that it prevents enforcement of law. Conviction is rare in cases of murder. During the last twenty-two years previous to 1903 out of 129,464 homicides in the United States but 2,611 murderers were executed.

"2. It does not deter from the commission of murder. In 1881 there were 24.7 murders to each million of the population. In 1883 the number had reached 112. There are fewer murders in states which have abolished the death sentence, as in Maine and Wisconsin, than in New York and Pennsylvania, which still retain it.

"3. Innocent individuals are occasionally executed, which makes the state a murderer of the worst kind. Capital punishment prevents reparation in cases of subsequently proven innocence. 2

"4. Two or more men, organized under a form of government, have no more right to take life than one man has. It is murder in either case and brutalizing in both.

"5. The sanctioning of capital punishment degrades and hardens any community which allows it to stand as its highest ideal in dealing with any crime. ✓

"6. It is certainly a relic of barbarism. To abolish it would be a step forward. As civilization has advanced punishment has always become less severe and crime has also become less common. The old law of retaliation is obsolete.

"7. Capital punishment usually deprives the criminal of the one due which civilized society owes its unfortunate children of this class, the chance for spiritual reformation and expiation, to prepare for the hereafter,

"8. Life imprisonment is a severer and juster punishment for a murderer than to be given early his earthly quietus. Those states which sanction legal murder do more; they murder civilization."

Fortnightly Review. 52:322-33. September, 1889.

Case against Capital Punishment. B. Paul Neuman.

"Forasmuch as the ende of their wrath and punyshmente intendeth nothyngel elles but the destruction of vices and savynge of menne."—*Utopia* (Arber's edition, p. 50).

In these words the noble-hearted More laid down a principle which the penal code of his own country has consistently violated. For his language clearly points to reformation as the object of punishment, and English law has persistently clung to that one form of punishment which makes reformation almost impossible unless by a miracle. In More's own time and in the reign of Elizabeth the proportion of executions to the number of the population is almost incredible, while as late as the reign of George III. there were on the statute book something like two hundred crimes punishable with death. No doubt in many cases the law was a dead letter, but even so, the state of things was a scandal to the rest of the civilised world. Well might Mirabeau say: "The English nation is the most merciless of any that I have heard or read of." Douglas Jerrold, a writer by no means given to "sentimentalism," draws a picture of Georgian justice:—

The Lords of the Privy Council had met with good King George III. at their head to correct the vices of the land. There was death for the burglar, death for the foot-pad, death for the sheep-stealer, death, death, death for a hundred different sinners. The hangman was the one social physician, and was thought to cure all peccant ills. Horrible, ghastly quack! And yet the King's Majesty believed in the hideous mountebank, and every week, by the advice of his Lords of the Council—the wise men of St. James's, the Magi of the kingdom, the starred and gartered philanthropists—every week did sacred royalty call in Jack Ketch to cure his soul-sick children! Yea; it was with the hangman's fingers that the father of his people touched the people's evil. And if in sooth the malady was not allayed, it was not for lack of paternal tending, since we find from the Old Bailey Register—that thing of blood and bigotry and ignorance—that in one little year, in almost the first twelve months of the new drop, the hangman was sent to ninety-six wretches who were publicly cured of

their . . . in the front of Newgate! And the King in Council thought there was no such remedy for crime as the grave; and therefore by the counsel of his privy sages failed not to prescribe death warrants. To reform men was a tedious and uncertain labour; now hanging was the sure work of a minute.

Slowly and in the face of strenuous opposition from "strong" judges and weak prelates the statute-book was purged of most of these monstrous enactments, until at the present day, putting on one side martial law, the capital penalty is inflicted only in cases of treason or murder. It is pretty generally admitted that increase of crime has not followed the successive relaxation of the penal code, and hence the question has been of late years constantly mooted:—Why retain the penalty of death at all? How uneasy and unsatisfied public opinion is at the present time, is shown by the fact that when sentence of death has been passed, in almost every case an agitation for a reprieve follows as a matter of course. The remarkable outbreak of feeling in the Maybrick case has furnished the most recent illustration of this dissatisfaction. Men are happily growing less and less enamoured of that robust civic virtue which often appears so excellent an imitation of cynical indifference. The sacrifice of an innocent life, however rare, is felt to be a heavy price even though it purchased for the rest of us comparative immunity from crime. Mr. John Bright, speaking at University College, London, a few years ago, expressed a pathetic hope he might live long enough to see the uprooting of the gallows-tree. It still flourishes and brings forth fruit after its kind, but his was the hand that laid the axe to its root.

The literature of the subject, though sufficiently copious, is not very accessible to the ordinary reader, being for the most part contained in Blue Books and in Hansard's reports. Perhaps this may explain why, in spite of the interest shown in particular cases, so few people take the trouble to inform themselves accurately upon the general question. In any case it may be useful to recapitulate and summarise the facts and arguments upon which the opponents of capital punishment take their stand.

There will probably be little difference of opinion ^{as to} the ultimate objects of punishments. They are:—

(1) The protection of society; (2) the reformation of the criminal.

Some persons might be disposed to add a third, namely the vindication of the outraged majesty of the law; but this, if analysed, will be found either to fall under (1) or else to be only a euphemism for revenge.

Bearing in mind these objects, let us next inquire what are the tests or marks of suitability to be applied to any particular punishment. The most important of these tests appear to be the following:—

- (1) It should be capable of certainty in application.
- (2) It should be susceptible of graduation.
- (3) It should be revocable.
- (4) It should be of a reformatory character.
- (5) It should not shock the moral sense of the community.
- (6) It should not destroy sources of evidence.
- (7) It should be an efficient deterrent.

Let us try the punishment of death by these tests.

- (1) As to the certainty of application.

"If it were possible," says Sir Samuel Romilly, "that punishment, as the consequence of guilt, could be reduced to absolute certainty, a very slight penalty would be sufficient to prevent almost every species of crime except those which arise from sudden gusts of ungovernable passion."

The converse of this proposition appears to hold good. Where the penalty is very heavy its incident is apt to become erratic and uncertain. Of all punishments used by civilised nations the punishment of death is most open to this objection. Under the old law, when death was inflicted for minor offences, this feature was even more apparent than it is at the present day. Mr. Harmer, a solicitor with a very large Old Bailey practice, said, when examined before a parliamentary committee in 1819—

The instances, I may say, are innumerable, within my own observation, of jurymen giving verdicts in capital cases in favour of the prisoner directly contrary to the evidence. I have seen acquittals in forgery where the verdict astonished everyone in court, because the guilt appeared unequivocal, and the acquittal could only be attributed to a strong feeling of sympathy and humanity in the jury to save a fellow-creature from certain death. The old

professed thieves are aware of this sympathy, and are desirous of being tried rather on capital indictments than otherwise.

The late Sergeant Parry on a subsequent occasion gave the following evidence—

It is a common observation in our profession that there is nothing more difficult than to obtain a verdict of guilty from a jury where the charge is murder. It has frequently occurred that the jury have asked—Can we find a verdict of manslaughter? *No*, you cannot. And the prisoner is allowed to go free.

It may be objected that such evidence as this has no application at the present day, but it is easy to supplement it from more recent sources. In the course of a recent debate in the House of Commons, Sir Colman O'Loughlen said he had within the last forty-eight hours prosecuted a man in County Cork, about whose conviction, but for the penalty of death, he felt certain, but who, as it was, was acquitted. Every one of the Crown solicitors on the Munster Circuit, and he believed, the majority of the judges, were of opinion that if capital punishment were done away with the number of convictions would be increased. The experiment of doing away with capital punishment has been tried in several of the American states, and the result throws a light upon the subject which only inveterate bigotry or stolid prejudice could venture to disregard. Take, for instance, the case of Wisconsin. Writing to Mr. John Bright in 1864, the governor of that state thus expresses himself—

The evil tendency of public executions, the great aversion of many to the taking of life, rendering it almost impossible to obtain jurors from the more intelligent portion of the community, the liability of the innocent to suffer so extreme a penalty, and be placed beyond the reach of the pardoning power, and the disposition of courts and juries not to convict, fearing the innocent might suffer, convinced me that this relic of barbarism should be abolished. The death penalty was repealed in 1853. No legislation has since re-established it, and the people find themselves equally secure.

Some years later, in 1873, we find this passage in Governor Washburne's message:—

There can be no doubt that the change in the law has made punishment more certain, and I but express the opinion of those who have most carefully considered the question, when I state that but for that change in the law, at least one-half of those convicted would have escaped all punishment—so difficult is conviction when the punishment is death.

Reverting to 1864, the governor of Michigan writes:—

Before the abolition of the death penalty murders were not unfrequent, but convictions were rarely or never obtained. It became the common belief that no jury could be found (the prisoner

availing himself of the common law right of challenge) which would convict. There can be no doubt that public opinion sustains the present law, and is against the restoration of the death penalty. Conviction and punishment are now much more certain than before the change was made.

Similarly, the Chief Justice of Rhode Island, where the death penalty has also been abolished, writes:—

My observation fully justifies me in saying that conviction for murder is far more certain now in proper cases than when death was the punishment of it.

(2) As to susceptibility of graduation. 'It is hardly necessary to say that scarcely any two instances of the same species of crime show precisely the same degree of turpitude; motive, provocation, surrounding circumstances, age, character, all have to be taken into consideration in estimating the amount of punishment requisite. Hence the need for graduation in the punishment. Simple imprisonment, hard labour, penal servitude, even the lash are all capable of more or less accurate graduation. Nowhere is there greater room for difference in the degree of guilt than in the case of murder, and yet the punishment inflicted is one and the same in every case. In some cases, indeed, even death may be a severer punishment to one man than to another. To a man brought up in the higher ranks of society the social infamy and the personal degradation may add a sting to the punishment which may be entirely absent in the case of one less fortunate in his birth. But this distinction which in other punishments can be taken into account and allowed for, operates, in the case of death, altogether independently of the judge. Hence it may, and no doubt often has happened, that the punishment has borne most heavily where the guilt was lightest.

(3) As to revocability. Here again it is perfectly obvious that of all punishments, that of death is, tried by this standard, the most unsatisfactory. For although it is perfectly true that in one sense all punishment is irrevocable as soon as it has commenced to operate, yet in every other case, as long as the victim is alive, it is possible either to remit a portion of the sentence or to make substantial reparation. If, therefore, it can be shown that there is an appreciable danger of so fatal a miscarriage of justice,

most people would freely admit that the case against capital punishment is a very serious one. The risk of such a miscarriage might, no doubt, be lessened by the adoption of that simple measure of reform which for so many years has clamoured vainly at our gates—the creation of a Court of Criminal Appeal. Even then, however, the danger would not be removed, and the argument against capital punishment would to many minds still remain overwhelming.

Now, what are the facts of the case?

Some time ago Sir James Mackintosh, a most cool and dispassionate observer, declared that, taking a long period of time, one innocent man was hanged in every three years. The late Chief Baron Kelly stated as the result of his experience that from 1802 to 1840 no fewer than twenty-two innocent men had been sentenced to death, of whom seven were actually executed. These terrible mistakes are not confined to England: Mittermaier refers to cases of a similar kind in Ireland, Italy, France, and Germany. In comparatively recent years there have been several striking instances of the fallibility of the most carefully constituted tribunals. In 1865, for instance, an Italian, named Pèlizzioni, was tried before Baron Martin for the murder of a fellow-countryman in an affray at Saffron Hill. After an elaborate trial he was found guilty, and sentenced to death. In passing sentence the Judge took occasion to make the following remarks, which should always be remembered when the acumen begotten of a "sound legal training" and long experience is relied on as a safeguard against error:—

In my judgment it was utterly impossible for the jury to have come to any other conclusion. The evidence was about the clearest and the most direct that after a long course of experience in the administration of criminal justice I have ever known. . . . I am as satisfied as I can be of anything that Gregorio did not inflict this wound, and that you were the person who did.

The trial was over. The Home Secretary would most certainly, after the Judge's expression of opinion, never have interfered. The date of the execution was fixed. Yet the unhappy prisoner was guiltless of the crime and it was only through the exertions of a private individual that an innocent man was saved from the gallows. A fellow-countryman of his, a Mr.

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Negretti, succeeded in persuading the real culprit (the Gregorio so expressly exculpated by the Judge) to come forward and acknowledge the crime. He was subsequently tried for manslaughter and convicted, while Pellizioni received a free pardon.

Again in 1877 two men named Jackson and Greenwood were tried at the Liverpool Assizes for a serious offence. They were found guilty. The Judge expressed approval of the verdict and sentenced them to ten years' penal servitude. Subsequently fresh facts came to light and the men received a free pardon.

Once more, in 1879 Habron was tried for the murder of a policeman. He was found guilty and sentenced to death. An agitation for a reprieve immediately followed. The sentence was commuted to penal servitude for life. Three years after, the notorious Peace, just before his execution for the murder of Mr. Dyson, confessed that he had committed the murder for which Habron had been sentenced.

With these incidents fresh in our minds, let us turn once more to *St. Giles and St. James*, and listen to the indignant words of Douglas Jerrold:—

Oh that the ghosts of all the martyrs of the Old Bailey—and though our profession of faith may make moral antiquarians stare, it is our invincible belief that the *Newgate Calendar* has its black array of martyrs; victims to ignorance, perverseness, prejudice; creatures doomed by the bigotry of the council table; by the old haunting love of blood as the best of cures for the worst of ills—oh, that the faces of all of those could look from Newgate walls! That but for a moment the men who stickle for the laws of death as for some sweet domestic privilege, might behold the grim mistake; the awful sacrilegious blunder of the past, and seeing, make amendment for the future.

(4) As to its reformatory character.

It was boldly asserted by Mr. Roebuck in the House of Commons that a murderer was not to be reformed. Few humane or reasonable people will be inclined to endorse such a statement, least of all those who look up with reverence to Him who came to seek and to save that which was lost. It must be remembered, too, in this connection that many of those convicted for murder are quite young. Thus in three years, from 1878 to 1881, there were among such criminals young men of 18, 20, 21, 22, 23, 24, 26, and 27. Then the circumstances of the criminal class from which many of these cases come ought surely to be taken into

account. Born in vicious homes, brought up amid the vilest surroundings, the abject slaves of their own worst passions, it is not too much to say that sometimes the prison chaplain's is the first good influence that seriously touches the convict's life. But think of the cruel irony of giving three weeks in which to reverse the habits of long years! Nor is this the worst. At the present day, except under very unusual circumstances, efforts to obtain a reprieve almost always follow a conviction for murder. Of these efforts the prisoner is of course aware. Hence, though guilty, he feels he has still a chance of life if he can lie hard enough to create a doubt in the Home Secretary's mind. At the very foot of the gallows, therefore, he goes on adding sin to sin, and too often invoking the name of God to witness to his falsehood.

(5) As to its accord with the moral sense of the community, it is nothing less than a disaster when the public sympathy is enlisted against the law and in favour of the criminal. Yet this is what constantly happens now in cases of murder. In the old days the highwayman on the road was an unmitigated nuisance, but, once trapped, he became a hero. Many a Beau Brocade has gone to Tyburn amid something very like a popular triumph. And this short-lived popularity he owed partly to the feeling that his punishment exceeded his deserts, and partly to the sympathy which is almost always extorted by the sight of a man engaged in a struggle for dear life. Both these sentiments still operate in the case of those sentenced to death. It is the spectacle of a desperate man fighting for his life against overwhelming odds that invests the lives of such scoundrels as Burglar Peace and Bush-ranger Kelly with quite a halo of romance. Then, too, it is now recognized that the crime of murder is not separated from all other crimes by such a gulf as to make it justly visited by a penalty inflicted in no other case. Take a simple instance.

A, a half-starved miserable tramp, goes out on a lonely country road armed with a knife, intending to rob the first passer-by. A farmer returning from market comes along. A demands his money, is refused, and in the struggle that follows, stabs him to the heart.

B, a well-to-do artisan, has a grudge against X, a former employer, who has dismissed him for gross misconduct and refused

to give him a character. He purchases a dagger-knife, waylays X at night in a field, and makes a desperate stab at his heart. The knife, however, strikes against a sandwich box in X's pocket, and the intended victim escapes absolutely uninjured.

Now of the two, as far as moral guilt is concerned, B's offence is the blacker, yet A will be hung while B will escape with a term of penal servitude liable to abridgment on ticket of leave.

There is, however, no need for particular instances. There are offences which, whether looked at from the point of view of the guilt involved, or from that of the suffering entailed, are more grievous and terrible than many a murder; yet the offenders either escape scot-free or with wholly inadequate punishment. Hence in case after case of murder the punishment seems too heavy for the offence, and hence the now almost invariable agitation for a commutation of the sentence.

Another circumstance that has to be taken into account is that the religious sentiment of the country is growing more and more antagonistic to the death penalty. The Friends, and perhaps the Unitarians, have hitherto stood almost alone in the thoroughness with which they have applied the teachings of Christ to the social questions of the day. Now the bulk of the religious world in England is following their example. But they perceive that the maintenance of the death penalty involves them in a horrible dilemma. They, at any rate, cannot, in the face of their Master's teaching, assent to the proposition that all murderers are past repentance. When the allotted interval has expired, the convict is either impenitent or penitent. If impenitent, how awful to hurry him with all his sins upon his head into the presence of that God who—more patient than we—would have given him a longer time for repentance! If sincerely penitent, forgiven by God, born into a new life, what but the clearest, most absolute proof that his death is necessary to the safety of society can justify us in forthwith strangling him?

True, says the Attorney-General (Sir J. Holker) in a recent debate, it is a terrible thing to give so brief a time for repentance before you execute the sentence, but you must remember the murderer gave his victim still less. Was there ever a more

shocking application of the discarded principle, dear to lawyers of an earlier age, "An eye for an eye, and a tooth for a tooth"?

Finally the development of medical science makes capital punishment seem more and more of an anachronism. Out of every hundred committals for murder in England there result about forty-nine convictions, and of these forty-nine convicts about fourteen on an average are insane. But besides this, there can be little doubt that many have been hung who were practically not responsible for their actions. In fact, the whole question of moral responsibility is surrounded with so much doubt and difficulty as to furnish one more strong argument against taking an irrevocable step. The tendency of medical science at the present day is more and more to refer moral delinquencies in part at least to physical causes, and it may often happen that a convict's reformation is begun by the prison doctor sooner even than by the chaplain.

(6) As to its effect upon the sources of evidence. Under this head it is unnecessary to say more than that of all punishments that of death is necessarily in this respect the worst. Many a convict is the depositary of information which cannot be obtained from any other quarter, information which, as in the case of Habron, may result in the undoing of a grievous wrong. To kill such a prisoner is to finally seal against ourselves one of the most important sources of information.

(7) As to deterrent effect. I have left this to the last, as being the most important test, and one that requires the fullest consideration. I feel perfectly certain that nine out of every ten believers in capital punishment base their devotion solely on the ground that without it murders would increase to an alarming extent, and society would not be safe. If it can be shown that the facts of the case do not warrant these apprehensions, eight out of the nine would in all probability gladly abandon their position and join the movement for abolition.

First of all, however, it must be noticed that the supporters of the death penalty stand as to this matter of deterrence in a very different position from that occupied by its opponents. The

other arguments used in its favour are arguments of despair, sometimes ingenious, sometimes not even that, as the diligent student of Hansard can sadly bear witness. The one plea for the gallows, strong in its plausibility, is this:—There is nothing so dear to a man as his life; therefore the threat of death must be the most terrible and the most efficacious.

But the opponents of capital punishment do not hazard their cause on the issue of a single argument. They might admit, if facts were against them, that the death penalty is the greatest deterrent, and yet urge its abolition on the other grounds I have already alluded to, especially on the ground of its uncertainty and irrevocability. For, after all, deterrence is not everything. If the threat of hanging deters men from crime, surely the threat of burning or a preliminary course of torture would be still more efficacious. Nay, why not hand over the convict to the vivisectors, and thus at one stroke safeguard society, spare dumb animals, and further the advancement of science? The only logical answer that could be given to such a query would be, that we should in the long run lose more than we should gain. It would be like Bastiat's famous illustration in political economy. That which is seen would be a diminution for the time in the number of murders. That which is not seen would be the slow, but certain deterioration and brutalisation of society by the use of such means. And precisely the same reasoning applies to hanging without torture. As Mr. John Bright well said:—

Whenever you hang a man in the face of the public under the circumstances to which we are so accustomed in this country, if you do in the slightest degree deter from crime by the shocking nature of the punishment, I will undertake to say that you by so much—nay, by much more—weaken that other and greater security which arises from the reverence with which human life is regarded.

Another point worth remembering is that it is quite possible to exaggerate the value men—especially men of the class from whom most murderers come—set upon life, their own or their neighbour's. The trivial grounds upon which men, women, and even children, will commit suicide is a proof of this, which the benevolent verdict "of unsound mind" fails to impeach.

Another proof affecting a higher class in the community is found in the alacrity with which thousands of men, under the stimulus of a shilling a day and a brass band, will lay down their lives in a quarrel as to the merits of which they know little and care less.

But the great fallacy which underlies the plausible argument that the fear of death *must* deter is this—it assumes that the fear operates on the murderer's mind at a particular moment, at the moment, namely, when he is committing the crime. But this is an extravagant assumption, contradicted by the facts I am about to refer to. It may very well be that, when brought to bay in a court of justice, confronted with all the solemn paraphernalia of the law, the passion of hatred, lust, or greed long since extinguished, it may very well be that then death looms before the unhappy wretch as the most terrible of possibilities. But that is perfectly consistent with his having committed the crime uninfluenced by the slightest thought of the penalty.

We are not, however, left to mere opinion on this question of deterrence. We have fortunately a considerable body of evidence to guide us in forming our judgment, and this evidence I will now briefly, and I hope impartially, summarise.

In several foreign countries capital punishment has been either expressly abolished or practically dispensed with. The results of these experiments ought, one would think, to be decisive. Taking at first the cases of entire abolition we find as follows:—

HOLLAND.—Capital punishment abolished September, 1870 (as a matter of fact there has been no execution since 1860). The statistics of murder were as follows: 1861-9, 19 murders; 1871-9, 17 murders; and this notwithstanding an increase of population.

FINLAND.—There has been no execution since 1824. The Judge of the Court of Appeal states: "The security of person and property has not been in the least diminished by the suspension of capital punishment. Murders are extremely rare."

SWITZERLAND.—In 1874 capital punishment was abolished by the Federal Council. In 1870 Cantons were allowed to choose for themselves, and two or three have elected to reinstate the death penalty.

BELGIUM.—No execution since 1863. In the 10 years before 1863, 921 murders; in the 10 years after 1863, 703 murders.

PRUSSIA.—In decade 1869-78, 484 persons sentenced to death, only one execution (Hödel).

PORTUGAL.—Capital punishment abolished.

ROUMANIA.—Capital punishment abolished.

TUSCANY.—No execution for fifty years.

RUSSIA.—Capital punishment only retained for treason and military insubordination.

AMERICA.—Michigan, capital punishment abolished in 1847; Rhode Island, 1852; Wisconsin, 1853; Iowa, 1859; Maine, 1876.

In Michigan the statistics show that since 1847 murders have decreased, relatively to the population, 57 per cent. As to Wisconsin, Governor Washburne writes in 1873:—

It is twenty years since the abolition of capital punishment. No state can show greater freedom from homicidal crime. With a population representing almost every nationality, statistics show that crime instead of increasing with the growth of the state has actually diminished.

Of Iowa, Senator Jessup writes in 1876:—

Murder in the first degree has not increased, but has for four years decreased. Previous to the repeal of the old law there was one murder for every 800,000 people. For the four years since abolition there has been one in every 1,200,000. There is more lynch law where the gallows is retained.

This evidence might easily be multiplied, and, so far as I know, it all points in one direction.

Next let us take the cases of partial discontinuance.

AUSTRIA.—In decade 1870-9, 806 death sentences, 16 executions.

SWEDEN.—From 1869-78, 32 death sentences, 3 executions.

NORWAY.—From 1869-78, 14 death sentences, 3 executions.

AMERICA.—In Illinois, Tennessee, Indiana, and Oregon, capital punishment is practically discontinued, and in Louisiana and Minnesota almost so.

Of all these cases Switzerland is the only one that even a perverse ingenuity can use in favour of the deterrent effect of capital punishment. Even there, however, the majority of the Cantons dispense with the death penalty, and that in face of the fact that no efficient substitute has been provided. But I am not concerned to haggle over every single item of evidence. In the face of the grievous disadvantages which everyone must admit are inseparably connected with this punishment, it surely lies upon its advocates to prove by overwhelming evidence that society is not safe without it. Instead of this, the evidence points in an exactly opposite direction. Society seems safer and human life more secure where reverence for it is taught by precept and not violated in practice. It may be true sometimes, as Canning said, that nothing is so fallacious as figures except facts; but it is a dangerous thing to assume that because facts and figures both point to a certain conclusion, therefore

that conclusion is wrong. Yet this, or something very like it, is the position into which the advocates of the death penalty are driven.

There are several minor points which I cannot discuss within the necessary limits of an article such as this. The irregular and practically secret appeal to the Home Secretary; perpetual imprisonment as a substitute for death; the question of how to deal with attacks on warders where such imprisonment is resorted to; these and other kindred matters are subordinate to the main question. That question as it presents itself to me is shortly this. If other countries and our own kin across the sea can dispense with the awful penalty, why not we? Is there still any grain of truth left in Mirabeau's reproach, or are Englishmen so intractable and ferocious that they must be kept in with a more galling bit and bridle than suffices for their neighbours?

It is sometimes said that the judges and the Church are both in favour of the gallows. As to the former, Burke's fine saying is as true now as it was in the days of Thurlow.

The law is a science which does more to quicken and invigorate the understanding than all the other kinds of learning put together; but it is not apt, except in persons very happily born, to open and to liberalise the mind exactly in the same proportion.

Lord Ellenborough predicted chaos if men were not to be hanged for petty larceny, and Lord Eldon heartily agreed. As to the Church, if the pews lead the way, the pulpit, as it has often done before, will gird up its loins and follow meekly afar off.

Sir William Harcourt, speaking as a member of the Government, in a recent debate, refused to support the bill for the Abolition of Capital Punishment on the ground that, though he personally was ripe for the change, English public opinion was not. If this be so, it is surely the duty of those who look upon the gallows as an outrage on justice, humanity, and religion to do their best to arouse public interest and ripen public opinion.

Lowell's brave words are singularly apposite:—

New occasions teach new duties, time makes ancient good uncouth,
They must upward still, and onward, who would keep abreast of truth.

Lo, before us gleam her camp-fires, we ourselves must pilgrims be;
 Launch our Mayflower and steer boldly through the desperate
 winter's sea,
Nor attempt the future's portal with the past's blood-rusted key.

Friends' Intelligencer, sup. October 6, 1906.

Shall the State Kill? Charles Burleigh Galbreath.

Sixty years ago the distinguished reformer, whose name I am unworthy to bear, in his "Thoughts on the Death Penalty," declared:

"Among the most important subjects now claiming public attention, is the duty of society towards its offending members. The world has enjoyed, not altogether in vain, for eighteen centuries the precepts and example of the great Reformer, and is learning, slowly indeed, but it is to be hoped surely, the heaven-taught lesson that it is better to save life than to destroy, that it is more worthy a civilized and Christian community to reform than to exterminate transgressors."

Such was the language of Burleigh in the early days of opposition to capital punishment. Such is the thought of sober-minded men in these later years that have ushered in the renaissance of humanitarian effort and rational reform. It is the old problem revived again on the vantage ground of a new century. The theories of those early days are to be tested in a measure by the experience of intervening years.

An eminent divine has averred that the basis of argument for the death penalty is found in the familiar Scriptural declaration, "Whoso sheddeth man's blood, by man shall his blood be shed." In extended reference to divine authority, he adds: "This is the secret of some of the most terrible tragedies of retribution by the Divine Vengeance, otherwise so unaccountable, but as startling and warning for nations as for individuals."

Under this ancient code, invoked as the source of authority, the death penalty was prescribed not only for murder and manslaughter, but also for idolatry, blasphemy, licentiousness, disobedience of the magistrate, Sabbath breaking, and about thirty other offenses. Under the rectifying hand of time this code

of blood is fading away. From the statutes of some of our progressive states it has been obliterated forever. Others retain it only for premeditated murder. Still others hold to the form, but veto the penalty. Against this dread decree, in the morning light of the twentieth century, flash the inspired words of our Whittier, "All revenge is crime." Retribution yields to rational justice. Hatred foregoes its hideous rite, for the reformation of the individual and the safety of society.

Before entering upon the formal consideration of this theme, it is interesting and a little disappointing to note to what extent those who have written on the subject have been moved by prejudice. In the consideration of few other questions, perhaps, has there been a more palpable invention of premises to warrant preconceived conclusions. A case in point is found in the argument of Dr. J. M. Buckley, editor of *The New York Christian Advocate*. He quotes a letter from Dr. James T. Edwards, a former member of the Senate of Rhode Island, a state that has abolished capital punishment.

"Murder," writes Edwards, "has disproportionately increased since abolition, and in fact it reduces itself to this: We neither hang nor imprison for life for murder in the first degree. The criminals are pardoned, and I think no man 'imprisoned for life' has ever died in our prison."

This statement, if true, would not necessarily justify the restoration of the death penalty; but the fact is that Senator Edwards was mistaken. Had he taken the trouble to examine the records of his state, he would have found that the very first man sentenced "for life" to the state prison died there. His commitment bears date of November 16th, 1838, and his demise occurred April 3rd, 1849. Nor is that all. Had he examined the records further, he would have found that others committed since capital punishment was abolished have died in prison. The senator did not examine the records. He learned, probably, that life prisoners had been pardoned. He waxed indignant and eloquent. He longed for a return to the halcyon days of the gallows. He simply did what others have been tempted to do. Regardless of facts, he reached the conclusion



"dear to his heart." He communicated his guess to the Rev. J. M. Buckley, who innocently published to the world this bit of misinformation which has been bandied about in debating halls and legislative assemblies for the past fifteen years.

Other instances of similar character appear in the literature on this subject. To these we may have occasion to allude as we proceed.

The consideration of a question so grave should not be approached in the spirit of special pleading. The evidence should be weighed and the arguments marshaled with the judicial poise and the logical acumen of Charles C. Burleigh. Inherited predilections toward the *lex talionis*, the decree of vengeance, the fang and talon of animal instinct, should be set aside. Equally unworthy a place in this discussion are the morbid sympathy and maudlin sentimentality that would exalt guilt and bend an aureole about the brow of crime. Our concern for the inmates of dungeons and the victims of the gallows should not blind us to the claims of thousands who, against an adverse star and beset with temptation, walks erect to the end. When society and the state attain more nearly to the ideals of Christ, proclaimed on the Mount, the occasions for punishment shall pass away, the instruments of torture and death shall crumble to dust and prison cells shall be tenantless. Until that millennium is reached, however, if the two be incompatible, the safety of the many must outweigh our sympathy for the few.

Under the milder sway of an era that magnifies the humanitarian spirit of the new dispensation, it is a little singular that eminent theologians should appeal to the Old Testament in support of the death penalty. They would not enforce it for the thirty odd other offenses specified in Holy Writ. They would retain it for premeditated murder only. Dr. Buckley has profound reverence for this mode of punishment. Life imprisonment in Rhode Island, at the time of the publication of his famous argument, was too mild and uncertain; in Michigan, it was too severe and cruel, but death by the gallows, or any other route, was just the thing. The Doctor would now probably register a different opinion in regard to the treatment ac-

corded to convicts in the state prison of Michigan, but he would still proclaim the death penalty divine, and write, as of old, the stamp of his approval in italics. There are eminent ministers of the gospel, however, who take the opposite view and maintain that the death penalty is without Scriptural sanction. Certain it is that the first murderer and others named in the Bible were not put to death for their crimes. We may leave this controversy, however, to the theologians, who are best qualified to cope with it. There was, as we know, an ancient code that demanded "an eye for an eye, and a tooth for a tooth," but when Christ paid the penalty and cried aloud on the cross, "It is finished," he ushered in the era of love and mercy and hope, and struck forever from the ancient statutes the code of blood and retribution.

It is gradually dawning upon the public that the welfare of the person convicted is entitled to consideration. The reformation of the offending member of society is now recognized as one of the legitimate ends of punishment. It is therefore worth while to consider the death penalty with reference to the interests of the unwilling candidate for a premature exit to eternity. Is he worth saving from the gallows? Is reformation possible for such as he?

It is the opinion of Dr. McGilvary, an eminent professor of Cornell University, that in some instances it is best to reform a man by killing him. "In the extreme case of capital punishment," says he, "it seems to be too much of a heartless paradox to say that the execution is for the criminal's own good, or in order to make him good. But I think without the flippancy which expresses itself in the proverb, 'only dead Indians are good Indians,' we can truly and seriously maintain that we kill some persons to make them good."

This method of reformation has its advocates among those who regard the question from the religious point of view. Their argument is briefly summed up by Eben Bumstead, of Boston, in a recent statement: "Life sentence seals criminals in sin, while imminence of death hastens repentance and the acceptance of the sacrifice of Christ."

Briefly put, Dr. McGilvary would kill some persons to make them good, and Eben Bumstead, the agent of Bostonian civic righteousness, would make some persons good to kill them.

The theory of Bumstead and others of his way of thinking seems to be that the victim is to be so thoroughly frightened by the swift and certain approach of the king of terrors that he will become a saint. While he is in this happy condition and before he has time to "back-slide," he is to be suddenly choked or electrocuted into heaven, there to enjoy bliss ages without end. Fortunate consummation! How the man found guilty only of murder in the second degree and sentenced to imprisonment for life must envy such an one! How sad the lot of all other prisoners and many not prisoners on this mundane sphere, compared with the fortune of the man frightened into sanctity and transported by the divine death penalty into an eternity of joy and song! What an incentive to the destroying angel or some of his agents to swoop down upon a community after a successful religious revival and send the redeemed post-haste to Paradise! Such an argument is too silly to be ludicrous.

There was a time when the lash and the rack and the fagot were the instruments used to drive unwilling souls to the arms of the Prince of Peace. That era has fled the earth forever. Bigotry and intolerance are not wholly dead, but never again shall they seize the reins of state and wield temporal power to celebrate their bloody rites. And yet the fanatics of old, who used the instruments of torture to turn souls to God, had at least a rational formula for their unrighteous work. When the fagots were about to be lighted they called upon their victim to repent. If he did this, he was usually restored to liberty. The theory was that if he was prepared to die, he was fit to live. The proposition of those who point to the death penalty as a reformatory agency is in substance this: Lead the prisoner to repentance by the imminence of the gallows, and when he has repented kill him, kill him quick and send him to heaven! If he does not repent, kill him anyway and send him to the other place!

There are others who contend that the life of a man who has committed murder is not worth saving. He has blasted his future and it is a merciful service to remove him from this world as promptly and painlessly as possible. While this view may not be pleasing to us, it is at least entitled to respectful consideration.

But the prisoner may not be guilty. It is possible in these times that justice may miscarry and the innocent be convicted. There can be no doubt that this was true long years ago when the popular prejudice against the accused was so strong that it virtually shifted to his shoulders the burden of proof. That such cases are comparatively rare at present is equally true. But instances are not wanting to show that juries and judges are still fallible.

Maud Ballington Booth, writing under date of September, 1903, gives details of two interesting cases. "A man was sentenced to life imprisonment for murder and served sixteen and a half years. Most of the evidence had been purely circumstantial and he was convicted mainly on the testimony of one witness. He was saved from the gallows only by the earnest efforts of those who had known of his previous good character. Last winter the woman who had borne witness against him came to what she believed was her death-bed, and, sending for the priest, confessed that she had committed perjury." The matter was brought to the attention of the governor, and the man at once liberated. He still lives. The state took sixteen and one-half years of his liberty, but did not shed his innocent blood!

"At the present time," continues Mrs. Booth, "I know a man who has served nine years and is still in prison, where he has been visited by the boy whom he was supposed to have murdered. His 'victim,' a mere child, disappeared, and this man, a tramp, who was overtaken in the forest by a search party, was held responsible. Some years after his conviction to state prison, the boy returned from what proved to be a runaway adventure, alive and well. It is sometimes very hard work to make the wheels of justice turn backward for those

once confined within prison walls, so the man, who was poor and friendless, is in prison still."

The fact that in our day justice may thus miscarry must give men of conscience pause before they seek remedial vengeance in the death penalty.

But is the life of the man who has actually committed this crime of murder worth saving? Has he, by violating the great law of God and man, placed himself beyond the reach of reform? Has he by this dread act renounced for all time the ties of brotherhood and become worse than the wild beast?

Rev. Cotten, for twelve years chaplain of Newgate, England, is said to have declared that he did not remember one instance of conversion and reformation "except in prisoners who were executed." A glowing testimonial, surely, to the divine efficacy of capital punishment.

The governor of the Portland convict prison in England bears this testimony: "I have only known two cases of real reformation in thirty-five years." It would seem here that not even the death penalty had proven efficacious, except possibly in the two exceptional cases, in regard to which we are left in the dark. The two prisoners may have been executed before they had time to get bad.

Fortunately, the testimony is not all to similar effect. Indifferently equipped and managed as are many of our American prisons to-day, it is safe to say that such discouragement would not be found in the reports of any one of them. In spite of all that has been said by the critics, and much of it justly, the fact remains that great improvements in recent years have been made in prison administration, and some of our large penitentiaries are becoming veritable reformatories. While some prisoners repeat offenses against the law, violate the terms of their pardon, and are returned a second or third time, these cases are the exception and not the rule. I have recently been in correspondence with officials in all the states in which capital punishment has been abolished, and all report specific instances of life prisoners pardoned who are living upright, useful lives.

The warden of the Wisconsin state prison, in a letter dated August 16, 1906, says:

"There have been received in this institution 263 prisoners under life sentence. Of these sixty-five have been discharged by pardon. Our records show but one case where the prisoner pardoned returned to crime."

The prisoner in this one instance, as the warden proceeds to explain, afterward committed forgery, for which he was sentenced to prison. Continuing, the warden makes this statement, which should be published widely and pondered well:

"My experience has been that the life prisoners are of a better class than those that are committed for burglary, larceny, etc., their crime, as a rule, being one committed in a moment of passion that does not reckon with the consequences of their deed."

Similar testimony could doubtless be collected from states that still impose the death penalty. Ohio, which claims to be law-abiding and fairly progressive in dealing with crime and criminals, could point to a number of interesting cases of redemption. A sturdy young German was sentenced to be hanged. The bearing of the man and his behavior pending the execution made such a favorable impression that his sentence was commuted to imprisonment for life. Later he was pardoned, and to-day he is a sober, industrious, useful citizen. Some years ago a young man, a painter by trade, committed murder in my native county, and was sentenced to death. In this county there are many descendants of pioneer Quaker settlers, and convictions for murder in the first degree are few. The fact that this man was found guilty of a capital crime is proof that the evidence against him was of the most direct and positive character. The time of execution was postponed. The prisoner was converted and became a religious enthusiast. This was not a signal to the state to rush him to execution. The sentence was changed to life imprisonment. His continued firmness in the faith inspired confidence in his sincerity. He was finally pardoned and to-day, by his blameless life and the zeal with which he holds to the path of rectitude, he is demonstrat-

ing not only that he is prepared to die, but more—that he is fit to live and show to the world that not in vain,

Hope's sunshine lingers on the prison wall.

So much for the reformation of the individual. But the welfare of the convicted criminal, important though it be, is not the paramount consideration in dealing with this great problem. Sympathy for the prisoner and interest in his future must not jeopardize the safety of society. Remorse may wring the soul of the criminal. Repentance for his rash act may make him spotless in the sight of God. His plea for an opportunity to atone for the past with a righteous future may move hearts of stone. And yet, he must be slain ignominiously and without mercy—if the safety of society demands it.

It is claimed that the death penalty will deter others from committing crime; that the example of a legal execution imposes a salutary restraint. If this be true, why was it abolished for minor offenses? Why are all its advocates and apologists agreed that it should apply to only one or two of the one hundred and sixty so-called capital crimes enumerated in the days of Sir William Blackstone, including premeditated murder, and descending through the scale by fine graduations to "breaking down the head of a fish-pond, whereby fish may be lost." All hail the good old times when life was cheap and fish were fully appreciated. Why was the restraining death penalty abandoned for these minor offenses?

Its advocates tell us that the punishment was not proportionate to the offense; that it offended the sense of public justice; that it became inoperative because of its severity. The principle for which they contend is "an eye for an eye, and a tooth for a tooth," not an eye for a tooth or a tooth for an eye.

But how extensively do we apply this principle in our punitive system? If two men are involved in a brawl and one lacerates the arm of the other, does the state settle the account by lacerating the arm of the offender? If one man bruises the face of another with his fist, are the ends of justice satisfied by placing the culprit in a machine and beating his face to a like degree of blueness and bloodiness? It would be impos-

sible to apply this principle for all misdemeanors, and if it were applied where possible the "sense of public justice" would be so outraged that our tribunals would be broken down and the instruments of blood and torture would be committed to the flames.

But has this "God-made" death penalty, as a devout author seriously calls it, neither too mild nor too severe, but just right, as Dr. Buckley declares—has this penalty a special virtue for the crime of murder? Does it deter?

The average man, in normal condition, perhaps, inclines to the opinion that it does, for such a man instinctively values life above all things else. But when a man commits murder his condition is abnormal, and rarely, if ever, do penalties deter. Sometimes, he promptly turns upon himself the instrument of destruction. Often he surrenders himself to the officer of the law, expecting to pay the extreme penalty. A venerable ex-warden of the Ohio penitentiary, under whose administration of eight years a number of prisoners were executed, recently wrote a letter favoring the abolition of capital punishment, and expressing his firm conviction, in almost the words of Warden Town, of Wisconsin, that, as a rule, murder is committed "in a moment of passion that does not reckon with the consequences of the deed."

These opinions, the results of careful observation and long experience, have a logical basis and are entitled to respectful consideration. But such testimony is not the strongest that can be offered in support of their view. The experience of states, as recorded in statistics, may be a dry theme, but it points unerringly to one conclusion. Four states, Rhode Island, Michigan, Wisconsin, and Maine, have abolished capital punishment. The first three have each been without it for over half a century. In none of the four is there any disposition to return to the death penalty.

Michigan was the pioneer state to abolish the penalty. The act was passed in 1846. For the last twenty-five years she has had fewer homicides proportionately than Wisconsin and Iowa, and, for my state, I regret to say, less than one-third as many as Ohio.

Rhode Island, which followed the example of Michigan in 1852, in spite of her dense population, occasionally pardons a life prisoner, and still has a rate of crime, in proportion to population, about the same as that of Michigan.

Wisconsin comes next on the roll in point of time and excellence of record. She abolished the death penalty in 1853 and has a lower rate of crime than Iowa or Ohio.

Maine has had an interesting experience. Prior to 1876 the death penalty was partially abolished. In that year it was abolished altogether. In 1883 it was re-established. Did the dread penalty stay the up-lifted homicidal hand? No. The very next year the number of homicides rose from four to thirteen. The two years following showed eight and five cases respectively. The governor declared in his message that the re-enactment of the death penalty had failed utterly as a restraining influence. In 1887 it was again abolished, in the language of an official of that state, "never to be enacted again." The number of homicides for the three years preceding the enactment of the death penalty was eighteen. The number for three years under the death penalty was twenty-six. For 1887 and 1888 there are no reports. For the three years following after the abolition of the death penalty the number dropped again to eighteen. Nor is this all. Statistics are available from that state covering a period from 1860 to 1904, with the exception of the years 1887 and 1888, making in all forty-three years. In twenty years, covering the earlier portion of the period while under capital punishment, the state had, according to judicial records, 253 homicides. For the remaining twenty-three years, without capital punishment and with a larger population, the state had only 162 homicides. With capital punishment the homicide trials averaged annually a little less than thirteen. Without capital punishment the average was seven. If population is taken into account, there were in Maine just about twice as many murders with the death penalty as there have been without it. And yet the gentleman from Boston who would frighten men to repentance and send them by the lightning express to Paradise, exclaims, "Is Maine, where

murder is so frequent, humane?" If he would examine the judicial statistics of his own state for the past fifteen years, he would find that the grand, old Commonwealth of Massachusetts has had twelve legal executions in that period and more homicides in proportion to population than Maine. The gentleman should be ashamed to talk thus on ground once hallowed by the footsteps of Wendell Phillips, who thundered against the death penalty.

But there are other states, we are told, that have abolished the death penalty, and after a brief experience have restored it. This is true of Colorado and Iowa. The statistics of both states, which I have before me, show that in neither was there an increase of crime during the period that the penalty was suspended, nor was there diminution when it was re-established. The warden of the Iowa state prison ought to be a competent witness, and this is his testimony. "I think the abolition of the death penalty had a fair trial and should have convinced the people that it was a good law. We certainly have not had fewer murders committed since capital punishment was reinstated."

But we are told that if the state will not execute, the people will; that lynchings, which have discredited us in the eyes of the civilized world, are the direct result of our failure to apply the death penalty with promptitude and celerity. Even so distinguished a publicist as Dr. Andrew D. White, if the newspapers quote him aright, is inclined to this opinion, and under certain conditions is disposed to regard lynching with favor, as an abridgment of the law's delay. If this opinion be correct, as numerous writers aver, we shall, of course, find the majority of lynchings in the states that have abolished the death penalty. What are the facts? In the last fifteen years two of these states have not had a single lynching. Of the others, one has had two lynchings and the other four, while Georgia, the state that leads all others, with 172 executions, also stands second, with 237 lynchings. Texas follows with 140 executions and 183 lynchings. Alabama almost duplicates the record, with 119 executions and 206 lynchings; while Mississippi,

which falls a little behind, with ninety-seven executions, leads all the states with 249 lynchings. Of 1,900 executions and 2,240 lynchings in the United States in the last fifteen years, twelve states, with less than one-third of the total population, performed 1,090 executions and 1,747 of the lynchings. Almost without exception executions and lynchings go hand in hand. This fact that "he who runs may read" should dispose forever of the excuse that the state must execute to prevent the people from taking the law into their own hands.

Of the other states, Iowa, Kansas and New Hampshire have had no executions in the last ten years. They retain the law, but veto the penalty. Two of these have had no lynchings in the same period, and in all of them the proportion of homicides is comparatively low. Public policy, reason and experience alike demonstrate that the safety of society does not demand the death penalty.

But we are told that crime is rapidly increasing in the United States. Dr. White, whom we all respect and honor for his courageous espousal of the cause of freedom before the civil war and for distinguished services to our country in later years, has sounded a note of alarm that has attracted the attention of thoughtful men from ocean to ocean.

"Deaths by violence," says he, "are increasing rapidly. Our record is now larger than that of any other country in the world. The number of homicides that are punished by lynching exceeds the number punished by law. There is nothing more nonsensical and ridiculous than this goody-goody talk about lynching. Much may be said in favor of Goldwin Smith's quotation 'that there are communities in which lynch law is better than any other.'"

"It is said," continues Dr. White, "that society has no right to put murderers to death. In my opinion society must fall back on the law of self-preservation. It should cut through, in my opinion, for its life. Life imprisonment is not possible because there is no life imprisonment." Such is a portion of this remarkable address, published broadcast over the country. Many will hope that this reference to lynching is not

correctly reported. It seems like presumption to question an authority so high, but really that sentiment seems hardly worthy of Dr. White or the venerable author whom he quotes. It excuses the mob, the mob that wields aloft the bludgeon and the torch, and laughs in the intoxication of vengeance at the justice that it tramples under foot. I prefer rather the sentiment of a Southern governor, uttered so recently that it seems still to vibrate in this very air. To a frenzied mob about to take the life of a man who had committed a heinous crime, he said:

"I am a South Carolinian, and as governor of this state, let me beg you, let me implore, that the law be allowed to take its course. The state of South Carolina is on trial before the civilized world. The question is, shall the people in passion rule or shall the majesty of the law be upheld?" When I read that, I felt like making a trip to South Carolina to take off my hat to Governor Heyward. While the appeal failed in this particular instance, the spirit that it breathed is taking hold of the South and slowly but certainly closing a dark chapter in the history of the republic.

Lynchings have gradually diminished from 236 in 1892 to sixty-six in 1905. The South is grappling heroically with its grave problem and the solution seems in sight. The words of our sages should inspire the Governor Heywards, not the mobs.

We are attempting to demonstrate that the safety and preservation of society does not require the death penalty. Dr. White says there is no such thing as life imprisonment. Of the 263 life prisoners sentenced in Wisconsin only sixty-five have been pardoned. Of fifty-six committed in Rhode Island, twenty have been pardoned. The records of every penitentiary in the states that have abolished capital punishment show that Dr. White is mistaken and that there is such a thing as life imprisonment.

This leads to another important question which must be considered all too briefly here. What is to be done with the life prisoner? That should depend upon the prisoner himself. When his progress makes it certain that he can, with absolute safety, be restored to society, reason demands that he should

be liberated. If his character is such that this can never be done, he should be rigidly confined and humanely treated to the end of his natural life. Who is to determine his fitness for parole? Not a pack of politicians responsive to "pull," but an administrative officer and an advisory board, all trained criminologists, with a tenure of office dependent upon efficient service.

Society is advised to be stern, relentless, or, quoting literally, "to cut through." Occasionally some one arises and, looking deliberately into the past, proclaims that the virtue of punishment is measured by its severity. They catch the ears of callow statesmen, who introduce bills for the re-establishment of the whipping post and other agencies of antique ferocity.

It is becoming somewhat the vogue to out-Winkle Rip Van Winkle ten times over, and after a rub of the eyes to declare that this shall be New England, in the days of the pillory, the stocks, and the lash. Quite recently, when some of us were on our way to the conference, John Temple Graves, in his characteristically fervid eloquence, called for the revival of the branding iron as an instrument of punishment. Only a short time ago, not far from this place, Secretary Bonaparte proposed to cure anarchy by a more general application of the death penalty and the rehabilitation of the whipping post. Murder at the hands of the anarchist is a most deplorable crime, and in this country without the shadow of excuse. In every civilized nation the penalty is death, swift and sure. But the fact remains that the penalty does not prevent the recurrence of the crime. Of the supplemental punishment suggested by the distinguished Secretary, it has been well said: "Neither would it benefit the anarchist nor the country to have the anarchist publicly whipped. That sort of punishment would be a martyrdom and a delight to the anarchist and would do anything but tend to make him a peaceful citizen. . . . Excessive punishments are wrong in principle. The honest indignation of Secretary Bonaparte is commendable. His proposed remedies are not." Pleas for the re-establishment of the whipping post and the branding iron are not to be taken seriously. They went with the wreckage that humanitarian progress has swept away forever.

Dr. White says that our record of homicide is now greater than that of any other country in the world. We do not know where he gets his authority for this statement. While the number of homicides is proportionately high in the United States, Dr. White's statement may be seriously questioned. It is doubtful whether statistics exist that would serve as a fair basis of comparison. The most valuable figures on homicide in the United States, although not official, are those collected under the editorial management of George P. Upton, of the Chicago Tribune. In a recent letter he explains that the term homicide is made to include deaths by violence, and he specifies among the causes those occasioned by liquor, insanity, jealousy, quarrels, self-defense, strikes, riots, and cases where no cause is given. It does not include suicides, lynchings and executions. The term is used broadly, and it seems that Dr. White has made Upton's statistics as the basis of his claim. But if the statement is true, if the United States has more homicides than any other nation of the world, what does it prove?

In the states that have abolished capital punishment the proportionate number of homicides is low. If the United States leads all other nations in the crime of murder, that disgraceful eminence is due to the states that throughout their entire history have prescribed and executed the penalty of death.

In this letter to which I have referred, Upton states that he has not kept statistics of homicides for separate states, but that they are proportionately most numerous in New York and Pennsylvania in the North, and in Texas, Tennessee, Virginia and Mississippi in the South.

It is a fact of prime significance that the two Northern states named lead also, absolutely and relatively, in the number of legal executions in that section. Murder and the death penalty go hand in hand. They flourish together.

The states named in the South are likewise high in the list of executions and lynchings. One of them leads in the latter. "The state kills its enemies. The citizen follows the example and kills his." "Vengeance grows by what it feeds upon." Murder and lynching and the death penalty go hand in hand. They flourish together.

If Dr. White's statement is true, in the light of these facts it proves that after more than a century of trial in the United States the death penalty has failed, and failed utterly.

But Upton bears further testimony. He says that homicides are relatively lowest in the New England states. Two of these, be it remembered, have abolished capital punishment. The moral is obvious. An official of Maine a few years ago said: "The Society of Friends within our state were ever urging in their petitions to the legislature for the abolition of the death penalty. The sentiment of our people is now so strongly against capital punishment that it may be safely assumed that the law will never again be enacted in Maine." In view of the results, what an incentive to consecrated effort. What a stimulus and inspiration to the interests that center here.

Capital punishment is growing unpopular in America. A well known authority has said that it is the most ancient of all penalties and the most common in antiquity, as it still is among savages. The legal execution, with its sensational details, is a sickening, disgraceful, degrading exhibition. It demoralizes the community, from newsmonger down to executioner. Public opinion has driven it from the light of day to the darkness of midnight and the solitude and gloom of the dungeon. There is none left to proclaim the beneficent influence of this horrid spectacle.

The death penalty does not reform, does not deter, does not protect, does not accomplish a single legitimate end of punishment. It has been tried; it has failed; and it is doomed. It may not wholly pass away in your day or mine. But an enlightened public conscience will veto this decree of blood and write for the state, as the state has written for its citizens, the injunction at once rational, Scriptural, salutary and humanitarian, "Thou shalt not kill."

Forum. 3:381-91. June, 1887.

Death Penalty. J. M. Buckley.

The recent execution of a woman for murdering her husband, under peculiarly revolting circumstances, has raised the question in some minds whether the time has not come for the abolition of the death penalty. The discussions in the press and in the New York legislature, on the propriety of hanging a woman, were noteworthy in several respects. The governor was besieged with petitions from within and without the state. Christians, unbelievers, and live-long opponents of capital punishment were re-enforced by the female suffragists, who protested against the hanging of a woman, as she had had no voice in the making of the laws.

The press in general held that the law should not discriminate on the ground of sex. The governor referred the matter to the legislature, declaring that unless it should take action he saw no reason to interfere. Whereupon a bill was introduced to prohibit the hanging of women; but the legislators saw that to make a distinction in such a case would be a stimulant to the commission of crime. Immediately a distinguished member introduced a bill for the repeal of the statute inflicting capital punishment. This was rejected by the house by a vote of about two-thirds.

Laws inflicting capital punishment have been almost universal. No conclusive argument in favor of any institution can be drawn simply from its antiquity or its universality; but when any principle or course of action has been generally adopted by mankind, this fact throws the burden of proof upon those who propose a change. If human governments have no right to take life in any case, capital punishment is judicial murder; or if it can be shown that there is a more effectual method of preventing crime, the same conclusion follows. In any discussion of the subject, the decision must turn upon these fundamental questions.

Theories of government—whether it be of divine origin, implied compact, or a natural and necessary organization of so-

ciety—have been involved in the controversy. So far as the Bible is concerned, it is not difficult to determine the right of governments to take life. The Old Testament is explicit upon this point, and capital punishment prevailed under often repeated divine sanctions during the entire period of the Law and the Prophets. In the New Testament the foundations of government are formally discussed in the Epistle of Paul to the Romans, thirteenth chapter; here it is affirmed that the Roman government derived its right from God:

For he is the minister of God to thee for good. But if thou do that which is evil, be afraid, for he beareth not the sword in vain: for he is the minister of God, a revenger to execute wrath upon him that doeth evil. Wherefore ye must needs be subject not only for wrath, but also for conscience sake. For, for this cause pay ye tribute also; for they are God's ministers, attending upon this very thing.

There are other passages equally conclusive. The teachings of Jesus Christ in the Sermon on the Mount cannot be alleged against the punishment of criminals without overthrowing the structure of government. That Christ did not mean to do that is clear from many references to law, judges, legal punishments, taxes, etc.; notably Matt. xxii, 19-21.

Show me the tribute money. And they brought unto him a penny. And he said unto them, Whose is this image and superscription? They said unto him, Cæsar's. Then said he unto them, Render therefore unto Cæsar the things which are Cæsar's and unto God the things that are God's.

The Sermon on the Mount teaches, in opposition to the law of retaliation, the spirit of personal forgiveness, sympathy, pity, and the desire to lead the offender to a better mind, rather than to find gratification in inflicting deserved pain upon him. But the administration of law according to the New Testament rests upon another basis. So that it is possible for a man to possess the spirit inculcated by Christ, and yet promote the conviction of a criminal. Any use of Christ's words which would make them incompatible with the infliction of capital punishment, provided the same be shown to be necessary, would bear equally against all forms of legal punishment.

On all other theories of government society must have the right to do whatever is necessary to maintain itself. So that the question is whether there is a more effectual way of pre-

venting crime than by the execution of those to whose crime the present law affixes the penalty of death. The final object to be attained by all punishment under human government is the prevention of crime. This involves several conditions. The criminal must be placed where he cannot commit crime. He must be reformed, if possible, so that he will be able and willing to resist temptations, and his fate must be made a warning to others. It is clear, however, that some criminals cannot be reformed; the presumption that they cannot being drawn from their deeds and from a knowledge of their personal characters. Society, therefore, has adopted a graduated scale; inflicting light punishments for the smaller crimes called misdemeanors, severer penalties for felonies, and so on, until the worst are reached, these being punished by imprisonment for life, or by death.

Practically, therefore, the question narrows itself to this: If the death penalty be restricted to murder committed with malice prepense, by a sane person, in resisting arrest, or in the commission of another felony, is it the best method of preventing such crimes? It is affirmed that the taking of human life, even by judicial processes, after clear conviction, diminishes its sacredness and thus leads to murder. This is an argument against public executions, nothing more. The conduct of criminals, the gushing sentimentality with which they are treated, the crowding of towns with spectators of both sexes and all ages, the minuteness with which the sickening particulars of the prisoner's conduct before the execution and upon the scaffold are published, the publicity given to his last words, the maudlin devotion of some women to almost every murderer, and the effeminate conduct of most ministers who are brought before the public as spiritual advisers of the condemned, form a combination of depraving elements, whose natural tendency is to promote crime. That the solemn infliction of capital punishment, apart from such scenic accessories, would diminish the sacredness of human life, or lead directly to murder, is but a gratuitous assumption.

The alternative must be imprisonment for life, for no one has yet appeared to advocate a sentence of less duration for

murder in the first degree. It is assumed that such imprisonment will place the murderer where he cannot commit a similar act; for the gravity of his crime demands that an example be made, and for this end nothing less than such hopeless imprisonment will be adequate. Upon such an assumption his reformation, if he does reform, affects not all his subsequent relations to society, to which he is as one dead, but only his personal character. Hence, the question is once more circumscribed to whether such imprisonment be sufficient to act as a deterrent; and whether it be possible, without greater cruelty than is inflicted in capital punishment, to maintain imprisonment for life.

In new countries, without prisons or regular judicial processes, the murderer and even the horse-thief is hanged, and the moral sense of the best citizens approves it. There is nothing else to do with him. He cannot be kept in restraint; he cannot be allowed his freedom. Judge Lynch there holds his court by day and night; nor does he adjourn for legal holidays or Sundays. From his judgment there is no appeal; no exceptions can be taken; no jurors disqualified; no challenges allowed; no defects in the indictment pleaded; no delays permitted in the interest of the guilty man. Here no insistence upon technical points can preserve the life of the criminal until the memory of his crime has been obliterated, and he appears as a poor, persecuted, and friendless wretch, whom it would be an act of philanthropy to release. But Judge Lynch, though absolute in power, is not infallible. He appeared at his best in the days of the Vigilance Committee in San Francisco. Then the culprit had a short shrift; and Judge Lynch was certain that if in any case the victim had not committed the offense with which he was charged, he had committed enough to justify his speedy surrender by the then imperfectly formed society to the Judge Supreme.

But the question must turn, not upon exceptional cases of inchoate commonwealths, but upon the practice of established governments, with all the powers implied in the civilization of the nineteenth century. It should be noted that imprison-

ment for life, with the possibility of pardon or escape, is a guaranteed support, under circumstances from which many of the criminal classes would not shrink; which not a few accept, after their desperate and hopeless lives, without any manifestation of grief or painful apprehension; and which the majority hail with joy when their fate has been uncertain, considering it an immense relief to escape the death penalty. The same element has been found to be of great importance in inducing persons to turn state's evidence. It is the opinion of some penologists that only criminals of unusually refined and reflective natures would prefer death to imprisonment for life; and it is probable that the thoughts voiced in Hamlet's soliloquy:

rather bear those ills we have,
Than fly to others that we know not of,

would be sufficient to keep them from "shuffling off this mortal coil," except under circumstances to be hereinafter mentioned.

A point of the first importance is that imprisonment for life offers a premium on additional murder. If a man has already committed murder in the first degree, has been sentenced for life for the commission of that crime, and is unrepentant; if this be the highest penalty allowed, what is to deter him from attempting to escape by the murder of his keepers? If he shall make a dash for liberty and kill his keeper, and shall be brought back, he is simply where he was before—sentenced for life. And the same views which would lead to the abolition of capital punishment would prevent the infliction of physical pain upon him. Murders have been perpetrated by prisoners under a life sentence, in states where capital punishment is not allowed. Nor is there any reason to suppose, if prison discipline were in any case relaxed so as to offer the hope of escape, that many such murderers would be deterred from the attempt by any fear that they might be the means of the death of an officer. Again, if imprisonment for life be the penalty for one murder, and capital punishment in no case be allowed, then the commission of two or three murders at the time of the original crime, or to destroy witnesses thereof, would not add to the penalty.

Nor is it just to say that persons intent upon murder are never mindful of such considerations as these. Murder in the first degree involves premeditation; and authentic instances exist of murderers decoying their victims into jurisdictions where the death penalty does not prevail so that in case they should fail to escape after the murder which they had planned, they would be liable to imprisonment only. And the elaborate scheme to take them out of the state in which capital punishment existed into one in which imprisonment for life was the sole penalty, was as deliberately contrived as the murder itself. I have seen a man in prison for life who had murdered his father, his mother, and his wife; murdering his wife that he might be free to marry a woman of whom he was enamored, and his parents that he might get hold of their property. There were no evidences of insanity, and he constantly assigned after his conviction, as a reason for killing them all, that "he might as well be hung for a sheep as a lamb, and if he killed only his wife he would be as badly off if he was caught as if he killed the whole of them."

To prevent escape is the first essential to the execution of a life sentence, and this was originally accomplished by solitary confinement. But solitary confinement almost invariably produces insanity in a comparatively short time. I have seen seven insane murderers in the penitentiary of a state where the death penalty had been abrogated. Not all of them became insane through solitary confinement, but some did, and the tendency is unquestionable. Instances in former years, in England, were so common among solitary life prisoners that the number was published, and used in every discussion of this subject. Civilization cries out against solitary confinement, except as a penalty employed for short periods, for the purpose of keeping order in prisons.

Co-operative work is the concomitant of non-solitary confinement; for to allow men to be together and to be idle would destroy order, and afford the opportunity for rebellion, riot, and escape. Co-operative work gives an opportunity for escape, and for crime; and it is not very uncommon for one

prisoner to assault or murder another, or an officer, or to escape. The use of tools, the change of place, and many other things combine to inspire hope of escape in the minds of desperate criminals.

The subject of pardon is even more important. The manner in which pardons are procured and granted in the United States has attracted the attention of observers in foreign lands, who have often asserted in the periodicals of Europe that nothing like it can be found elsewhere in the civilized world. Comparatively few who receive a life sentence remain in prison until death. The number of those having friends and personal or political influence who do so is very small. In 1870, having occasion to make some inquiries into this subject, I wrote to Dr. James T. Edwards, at that time a member of the Senate of Rhode Island, in which state capital punishment did not exist. I wrote to Dr. Edwards, because I had read a short time before a remarkable address delivered by him in the Senate upon the subject of pardons and the exercise of the pardoning power. His reply I now place before the reader:—

East Greenwich, R. I., March 21, 1870.

J. M. BUCKLEY. Dear Sir: Last year I had occasion to investigate the whole subject of punishment for crimes, and in the course of my investigation I communicated with every governor in the United States.

After a thorough and impartial comparison of our own system with that of other states, and a full investigation into the statistics of crime here and elsewhere, both now and in the past, I have formed the deliberate conviction that it would be for the interests of humanity, and the promotion of public security and order, to establish capital punishment in the state of Rhode Island.

Murder has disproportionately increased since its abolition, and in fact it reduces itself to this: We neither hang nor imprison for life for murder in the first degree. The criminals are pardoned and I think that no man "imprisoned for life" has ever died in our prison. Be that as it may, had I time I could give you startling facts to show you how justice is tampered with here under the present system. Truly yours,

J. T. EDWARDS.

On the other hand, if pardon be rendered impossible under any circumstances, two things are to be considered: that the rectification of mistakes would be attended with difficulty, and the maintenance of order in prisons would not be possible without cruelties from which humanity would recoil. The case seems, therefore, to reduce itself to this: that to make escape practically impossible, cruelties must be constantly perpetrated.

or the pardoning power must exist. And after the memory of the crime is forgotten, sympathy usurps the place of judgment; the murderer's friends are persistent; the friends of his victim are silent; fables are told concerning his health; his wife, perhaps, dying, pleads that he may be pardoned; political influence is enlisted, and he comes forth, the hope that he took with him of escape or pardon fulfilled.

About the same time that I wrote to Dr. Edwards, I wrote to the mayor of the city of Detroit, of whose sentiments upon the subject I was entirely ignorant, and received from him the following reply:

I am of the opinion, after a residence in this state of over sixteen years, that the security of life would be increased, and the ends of justice promoted by the adoption of capital punishment for murder in the first degree, when the party is convicted upon positive evidence.

I also wrote to an eminent lawyer of Detroit, Mr. D. Bethune Duffield, who replied as follows:

I am decidedly of the opinion that life is by no means as secure with us under our laws, which some years since abolished capital punishment, as it was before, or as it would be in the event of its restoration. . . . It is admitted by those who prefer solitary confinement to the death penalty, that the murderer has forfeited his life so far as all intercourse with his kind is concerned, and he must be put out of the way and shut up the balance of his days; "but with a view to his reformation!" His reformation, for what end? If they mean for his entrance into the next world (and they can mean nothing else, as the man cannot return to society), that may be done and the death penalty be still inflicted. . . . But to say that the abolition of the death penalty, and the substitution of solitary confinement, is humanitarian in its practical workings, is not true. The statistics of our state prison show that death or insanity comes to the rescue of the prisoner in about the eighth or ninth year of his confinement, and in the case of a woman generally sooner. I refer you to a table of statistics on this point, in the Report of our State Prison Inspectors for 1868, page 58. Doubtless the death and insane record would appear even larger, but that another modification of the law's penalty leaves it discretionary with certain of our executive authorities to relieve the convict from his solitary confinement, and put him to hard labor with the rest of the prisoners.

It was in the prison referred to by Mr. Duffield that I had seen seven insane murderers, and in that same prison an officer of high grade was subsequently murdered by a life convict. In Michigan the feeling against the present law, and in favor of the re-enactment of capital punishment, has been constantly increasing; and while this article was in preparation a bill for

that purpose failed in the House of Representatives by only one vote. Into the subject of statistics I do not enter; not because of any fear as to the result, but on account of the fact that mere figures, independent of an analysis of national temperament, social condition, climate, history, and government, reflect no more light upon such questions as this than they do upon suicide, insanity, longevity, or the increase of the population.

The most common objection to capital punishment is the possibility of mistake. That some innocent persons have been executed cannot be denied. That the number is very small is the opinion of those best informed; but the possibility of error must be admitted. The common form of stating the case is: "When a government takes human life, it takes what it cannot restore in case of a mistake." But the possibility of mistake did not prevent the infliction of the death penalty under the divine administration. The whole history of the Jews confirms this point; and unless it is held that in the times covered by the Bible every judicial decree was infallible, this should be sufficient to dispose of the question in the minds of believers in the Bible as a divine revelation. But as many citizens would not be governed by considerations drawn from any form of religion, it would seem sufficient to remind them that the liability to mistake attends all human judgments. False imprisonment takes away from a man what can never be given back; the time for which he was imprisoned is forever gone; and the possibility of spending an entire life in prison upon a false charge has been demonstrated. Besides this prisoners under such circumstances are liable to become insane, and cases of suicide from despair, where the prisoner was subsequently proved innocent, are not unknown. So that to denounce any form of punishment, justifiable on other grounds, on this consideration alone is unreasonable.

In this age men will rarely be sentenced to death where the evidence is not conclusive beyond the possibility of a doubt; and with the delays that exist in the execution of the law, the opportunities for new trials and commutations of sentence, the interests of the prisoners are far better protected than those of

the state, or those of private individuals who are the subjects of criminal outrages.

In the course of my investigations of this subject, having heard that the late John A. Kennedy, for many years Superintendent of the Metropolitan Police in the city of New York, had originally disapproved of capital punishment, I addressed a letter to him, to which I received the following response, in which the whole subject is clearly and unanswerably stated:

Office of the Superintendent of Metropolitan Police,
New York City, March 17, 1870.

J. M. BUCKLEY, Dear Sir: To inquiries such as yours I have uniformly declined to make reply. My theoretic opinions, formed in early life, were adverse to taking life under any circumstances, and during a term as petit juror of nearly twenty years, I managed to avoid being on the panel of capital trials, excepting in two cases, where the verdicts were manslaughter. But I must acknowledge that my views have undergone a change on this, as on other subjects, where experience and observation have operated on my judgment. And especially so since circumstances have brought me in immediate contact with the criminal classes.

The first lesson I learned was that our so-called reformatory prison discipline was a failure, so far as reformation is concerned; that its only benefit consisted in keeping the criminal out of the way of doing harm, so long as he was incarcerated; that, with scarce an exception, criminals come out of prison better schooled for crime, more hardened to undertake desperate chances in crime, and with increased personal acquaintanceship with the criminal classes, than when they entered the establishment. Indeed, I regard the reform of a criminal, after a second conviction, as very nearly impossible.

In regard to the class of offenses known as capital, the perpetrators are usually among persons who are not regarded of the dangerous classes; as jealousy, disappointment, drink, or sudden passion may influence a person, theretofore of good character, to commit a murder. And if there could possibly be such a thing as reformation by prison confinement, it would probably be more in consonance with modern ideas of humanity that imprisonment for life should be substituted for capital punishment. But no such reformation follows imprisonment as a rule. Reformation is exceptional. Then, should the class I have described be so sentenced, our experience in this country is, unless the prisoner dies early, that our sympathies operate upon the pardoning power, and the prisoner is released a much worse man than he was when first convicted.

In regard to the bad classes, who commit such offenses for revenge, or hire as an assassin, or in the perpetration of some other felony, or mere wantonness and recklessness of human life, I have to say that, frequently as these occurrences now take place, the number would undoubtedly be frightfully increased were the fear of the gallows entirely removed from their depraved apprehensions.

Uncertain as are convictions for the higher crimes by courts in this community, yet, that there is a possibility of their worthless lives being the forfeit of such crime, holds in check, to an astonishing extent, the worst population now having existence on

the footstool of the Almighty. Should the legislature of New York ever abolish capital punishment in this state, I should regard the vicinity of this city as a very unsafe place as a residence, or even to visit. I would bid the locality a final adieu. The last case of conviction for murder in this city presented, under testimony, that the reckless perpetrator, immediately after arrest, showed his confidence in his safety, by explaining, "Hanging's played out," immediately after having confessed that he had committed the crime.

In conclusion, allow me to say my experiences have convinced me that it would tend to the increase of capital offenses to relieve the perpetrators from capital punishment by law, until we reach that condition of moral improvement described by the prophet, when "the lion shall eat straw like the ox." When that day comes, if I have a voice, it shall be raised in favor of abolishing capital punishment.

Yours truly,

JOHN A. KENNEDY.

Lynch law is the natural product of the treatment of criminals in too indulgent a manner. The uncertainties of the administration of justice, and the escape of the criminals from even the insufficient penalties pronounced against them, account for many of the terrible scenes of burning, shooting, and hanging which disgrace our civilization. Nor are these crimes committed in the South alone, or on the frontiers. It is extremely grievous for human nature at its best estate, to see one who has murdered a father, a wife, or a child, or ruined a daughter, alive, and, perhaps through political influence and cunningly devised fables, set free; and not a few homicides have resulted from such provocation; whereas, if the punishment of criminals in a manner in harmony with a common sense judgment of their deserving were certain, only sudden outbreaks of passion would lead to interference with legal processes.

The present mode of execution is not essential. Hanging is repulsive, though it is a consideration of importance whether the method of punishment should not express in some unmistakable way the detestation of society for the crime. But the progress of civilization may devise a better way. The guillotine was an unsuccessful attempt to do so. What is essential is that the penalty for premeditated murder without extenuating circumstances shall be more certain, speedy, and private in its execution than it now is, and that it shall be *death*.

Green Bag. 10: 92-6. March, 1898.

Abolish the Death Penalty. James W. Stillman.

No man ought to be punished for any crime which he has committed simply for the purpose of deterring others from doing likewise, although his punishment may, or may not produce that effect upon them. If any criminal deserves such treatment at all, it must be solely on his own account and not on that of others who have not yet committed any offence deserving of the same penalty.

Harper's Weekly. 50: 1028-9. July 21, 1906.

Does Capital Punishment Tend to Diminish Capital Crime?

Thomas Speed Mosby.

The death penalty, as a feature of the penal code, is undergoing a process of evolution which, judging from existing tendencies and those which have characterized the world's jurisprudence during the past fifty years, must result in its complete extinction. It now exists in forty states of the American union.

In the investigation of this subject, the writer caused inquiries to be addressed to the attorney-generals of these forty states, asking their opinion as to whether capital punishment tended to diminish capital crime.

Eighteen of the forty declined to express an opinion. Only sixteen of the attorney-generals of states which inflict the death penalty declared themselves as clearly of the opinion that capital punishment does tend to diminish capital crime. Two of the forty were positive in their conviction that the death penalty does not tend to diminish capital crimes, and stated their opinion that the death penalty should be abolished, while four of the forty give qualified answers.

In the five states of Kansas, Maine, Michigan, Rhode Island, and Wisconsin, where capital punishment does not exist,

the attorney-generals have noted no increase in capital crime since the abolition of the death penalty, and generally express themselves as satisfied with the conditions existing in their respective states. In Michigan, Wisconsin, and Rhode Island capital punishment was abolished over fifty years ago, and has not since been re-enacted. Though nominally prescribed by law in Kansas, the death penalty can be executed in that state only upon the governor's warrant, and the Kansas governors have persistently declined to issue a death warrant, the condemned persons, meanwhile, remaining in prison. In five other states where the death penalty exists the trial juries have power to commute it to life imprisonment.

The death penalty was abolished in Iowa several years ago, but was again enacted by the legislature, as the attorney-general says, "because of the increase of murders in the state."

It does not follow, of course, that these sequent murders were consequent upon the abolition of the death penalty. Singularly enough, the experience of Maine has been quite the reverse of this. The death penalty was abolished in Maine in 1876. In 1883 it was re-enacted for the crime of murder alone. In 1885, just two years later, the governor of Maine, in his message, referring to the death penalty, remarked that there had been "an unusual number of cold-blooded murders within the state during the two years last past," and that the change in the law relating to murder had not afforded the protection anticipated. Two years later, in 1887, the death penalty was again abolished, and advices from Maine are to the effect that the sentiment of the people of that state is so strongly against capital punishment that there is little likelihood that the death penalty will ever be re-established there.

Harper's Weekly. 53: 8. July 3, 1909.

Should Capital Punishment Be Abolished? Edward

Charles Spitzka.

There are a number of cases on record of men who, after serving a sentence for felonious murder and being released, have committed a second murder of the same character. Last year M. Delyannis, the Prime Minister of Greece, was about to step into his carriage outside the Parliament House when a man named Gherakaris, who had come forward to open the door, turned upon him and murdered him. This murderer had recently been discharged from jail, where he had served a sentence for the murder of his wife. The motive of the crime reveals the reformatory efficacy of imprisonment to be of a rather questionable kind. The victim had undertaken to abolish gambling-houses in Athens. The murderer was a professional gambler, and resented this, being additionally stimulated by others of the same profession. Auxiliary motives of a financial nature were suspected.

A second case of this nature occurred thirteen years ago in Leghorn, where the editorial writer Bandi was stabbed to death by a certain Lucchesi, whose skill in the science of assassination need have caused no surprise, since he had already served his apprenticeship in jail for a previous crime of the same character. On the occasion of his previous trial his counsel had pleaded the Lombroso degeneracy doctrine, whereupon Bandi wrote an editorial denouncing this procedure, and ridiculing the doctrine. The article was so convincing that the Public Prosecutor waived the ordinary summing up and, in place of it, read Bandi's words to the jury, who promptly convicted Lucchesi. During his term in jail the murderer nourished a fierce hatred against the man whom he regarded as the cause of his condition, and as soon as he was released he murdered him.

Had capital punishment prevailed the lives of Bandi and the Greek Premier would have been spared at the expense of those of the assassins. Those who preserved the latter, to the

sacrifice of the former, by the abolition or disuse of the death penalty, are accessory to the wanton murder of useful and eminent citizens. The principle responsible for such a paradox and travesty of justice may call itself humanitarianism, but from genuine humanity it is as far removed as anti-vivisection, anti-vaccination, and the Emmanuel Movement are from science, safety of the public, and common sense. The breeder of rattle-snakes may be regarded as an enthusiastic herpetologist, but, should he liberate his dangerous pets in the midst of an assemblage of his own kind, he would be looked upon as anything but a philanthropist.

International Journal of Ethics. 15: 263-86. April, 1905.

Abolition of Capital Punishment. W. J. Roberts.

Let me call attention to a class of people whose interests are not often considered in this connection, namely, the inmates—prisoners and officials—of the place in which the execution takes place. It might easily befall an innocent or highly refined person to be confined to a prison at such a time; and his feelings as well as those of his less fortunate fellow-prisoners surely deserve our most earnest consideration. These people share very slightly, if at all, in the benefits which the public is supposed to have secured from the diminishing publicity of executions; and our objections acquire a tenfold force when we protest that the criminal class, which we desire to make less criminal, and the persons in charge of the criminal, should not be subjected to influences so degrading and ruinous.

I need only mention the obvious fact that the death penalty is in great part responsible for the fascination which stories of crime and violence exercise over youthful and undisciplined minds. The amount of crime produced by disordered imaginations, which have, through contemplating deeds of violence, become irresistibly fascinated and obsessed, is incalculable.

*The Deterrent Power of Punishment and of Capital Punishment
in Particular*

Thackeray complained that, with a certain kind of person, it was no use arguing about capital punishment. "You may talk to a man for a year upon the subject, and he will always reply to you, 'It is natural, and therefore it must be done. Blood demands blood.'"

We may hope that this is not an argument which at the present day would give much trouble to any thoughtful person; and its employment is usually confined to an abstract and unscrupulous controversialist, when every better argument failed him. What chiefly frightens many good people from the thought of abolishing capital punishment is an instinctive apprehension that the country would immediately begin to swarm with murderers and life would not be safe for an instant. Death is the only effective deterrent, they say, for a certain class of people, and the state cannot relax its hold of this weapon. This general abstract doctrine is often found to co-exist with a willingness to intercede for any condemned person, whose case is brought effectively under the theorist's notice. We contend that the theory is without foundation, and that the benevolent impulse to uplift the individual criminal not least by sympathy, patience, and mercy, provides the basis for a much better moral and legal theory.

1. As a general principle of punishment, it is hap-hazard and illogical. If deterrence be your object and harshness be your means, why should the present condition of the law, which is only, as regards murder, a matter of some forty years, give you such complete satisfaction? There is no reason, on this theory, why the harshness of the punishment should not be augmented and the same principle extended to other crimes. The criminal codes of Western Europe were long dominated by this principle, and they had a fair opportunity of "stamping out" crime if it could be done by such means. The statistics of crime in the centuries of this régime are a sufficient comment upon the claims of the deterrent principle.

2. Like the rest of mankind, criminals vary extremely in their desires and fears. We very often read of murderers jesting with prison warders about "being swung," and walking with alacrity to the scaffold. And what shall we say of the constant combination of murder and suicide, or of murder followed by the immediate self-surrender of the homicide to the police? We even read of some who accuse themselves of a crime which they never committed, or who commit murder with the deliberate intention of confessing, and obtaining through the scaffold a release from a disordered and miserable life. In general, we ought to learn, if only from the increasing prevalence of suicide, that it is idle to think of frightening desperate men with the threat of death; and that men need much rather to be encouraged to live bravely and nobly, in spite of their past, than to be cowed by spectacles and narratives of deliberate and professional homicide.

3. A close acquaintance with our own hearts and with actual cases of crime shows us that the thought of the punishment is either not present at all, when a powerful impulse leads to the commission of a violent act; or that it is commonly overwhelmed by a conviction of the certainty of escape. And, by the nature of the case, fear of capital punishment cannot prevent sudden and strictly unintentional acts of homicide, which, according to circumstances, are liable to be treated by our courts as murder.

4. Even if a large number of acts of violence were prevented by the fear of the death penalty, we might well doubt whether it would not be at the cost of producing a much larger number of such acts: whether mercy would not immediately, as well as in the long run, prevent more murders than are now prevented by severity. We are here in the region of moral probability where moral disposition and bias determine our judgments; and a man whose benevolent and merciful moral principles extend to the tempted and the erring will not doubt for a moment from which of the two, harshness or clemency, he may expect the most favorable results.

5. Past experience does in no wise belie the anticipations of our moral sentiments. Statistics cannot, from the complex character of this class of phenomena, generally speaking, supply us with convincing proofs of our theories. But so far as they go they justify us in making the following inferences:

(1.) The increasing humaneness of the penal codes of Western Europe has not led to an increase of those crimes in respect of which the severity of the punishment has been relaxed.

(2.) In particular, certain homicidal acts, formerly punished as murder, have not increased in frequency since they have been treated more leniently. In those cases, even if an increase in the crime took place, few, if any, would suggest a return to the old policy of severity.

(3.) The experience of those countries where capital punishment has been expressly or in effect abolished is, in the main, favorable to abolition: The Protestant Cantons of Switzerland, Portugal, Finland, Norway, Denmark, and Scotland, for example, do not compare unfavorably, to say the least, as regards statistics of violent crime, with Spain, France, Germany, England, and Ireland.

(4.) The abolition of capital punishment does not, of itself, secure a community against outbreaks of violent crime. But it is equally obvious that its retention does not protect either: homicidal crime is increasing, not diminishing, in England, France, and Germany; and the last few years are among the worst on record.

(5.) Even comparative failure would not discourage a community which had deliberately committed itself to a merciful and reformatory policy; it would only be an incentive to apply the new principle more amply and consistently in all departments of criminal law and administration, and of individual and national life.

George Eliot, to whom the principle of gentleness towards the erring is so deeply indebted, allowed herself, in a reactionary moment, to express a fear that much thinking over the causes of crime might make us unfit to punish the criminal. We face the reproach which such words commonly convey, without

fear or shame. We believe that it is only by thinking wisely, patiently, and anxiously of the causes of crime, and the real character of the criminal, that the deliverance of society from evil passion and violence can come. We believe, too, that much thinking or even a little thinking would make much of our punishing seem inhuman and preposterous; and even if the policy which our thinking brought us to adopt should appear, in many if not in all cases, to be anything but "punishment," we would joyfully abandon the name as well as the thing. We are confident that the victory over evil in others can be won only as we eliminate evil in ourselves: especially as we become conscious of an ever-increasing debt of gratitude to those who have forgiven us and of responsibility towards those whom we must forgive; as we realize that cruel and degrading acts do not cease to be our own, because we do not like reading about them, or would rather have nothing to do with the agents whom we hire to perform them; as we believe more and more fully that the mercy of man to his fellow is able and mighty to heal and to save.

International Journal of Ethics. 17: 290-301. April, 1907.

Reform and the Death Penalty. Carl Heath.

Consider the hanging of a woman. It may be supposed that every man with a sense of justice and unbiased by sex antagonism, must feel there is little moral excuse and much downright iniquity and stupid cruelty in such a proceeding. For in the first place, as to its justice, it is to be noted that no woman from first to last is allowed a say in the matter: the arresting, the trying and the judging, the passing of the sentence, the refusal to recommend mercy, the chaplain's ceremonial, the hanging and the burying, each item in the *via dolorosa* of the woman who slays her fellow-creature, is the deed of a man. And is not the very excuse given for the refusing to women a part in the judging of crime, *viz.*, that women as compared with men are, by their very sex temperament, and

physiological construction, less able to keep that evenness of mind from day to day and from week to week which it is essential for a judge to possess—is not that very fact, if true, one that would justify a differential treatment of the crime of murder by men and by women?

But it is just when brought down to this simple ethical basis that capital punishment completely fails. It is true enough that many of those who are hanged are emotionally acted upon by chaplains and others, and said to confess their crime and repent; and we hear from time to time of murderers dying confident of being shortly in heaven. But what evidence have we of, and in fact what time or environment is there for, the development of any real consciousness of the wrong done by the murderer against the community? And obviously death provides no outlet for the undoing of the wrong. (Such a consciousness would, in the majority of murder cases, be the product of the continuous pressure of reformatory elements, educative, social and moral, such as the right kind of penal institution might be expected to offer. And out of such a consciousness would grow an effective desire for reform, and thence a healthy condition of mind and soul that would restore the criminal to the community.)

International Journal of Ethics. 18:409-17. July, 1908.

Treatment of Homicidal Crimes. Carl Heath.

That the penal codes of civilized nations are invariably behind the moral sentiments and humane tendencies, if not of all, of the greater part of the peoples of those nations, is perhaps a natural condition of things. Any comparative study of the criminal laws of various countries does but serve to emphasize the fact. The dread hand of the law lies heavily upon us, and considered from an ethical standpoint, particularly the criminal law.

What, then, it may be asked, should be the treatment accorded to the homicidal criminal? Well, in the first place, it

must be *treatment* and not mere punishment for crime. And in the second place, this treatment must be based on a much more elastic interpretation of the legal definition of insanity. We must recognize that the thoroughly normal man, the sane man, is much rarer than we try to believe. Thirdly, we need an extended recognition of social responsibility. With the advance in social consciousness we shall come to see that "society itself is the primary cause of murder," as A. R. Wallace tells us. And when this is recognized, and treatment replaces punishment, much more intelligent, trained and sympathetic staffs must replace our present prison warders, so that such treatment be administered in a manner at once wisely firm and intelligently humane. I do not pretend to dogmatize as to the content of such treatment system, but often in these cases the simplest remedies are those most needed and most lacking in prison life—humane and healthy diet, open air, stimulating occupation, sympathetic teaching and wise control—all these factors, the antitheses of those provided by our horrible town life and often village life also. These are the remedies for the diseased homicide with his heavy mental cloud.

McClure. 24: 163-71. December, 1904.

Increase of Lawlessness in the United States. S. S. McClure.

I print herewith comments on the prevalence of crime and lawlessness in the United States, taken almost at random from representative and serious newspapers, and from the published statements of judges and citizens. I also print the statistics of murders and homicides in the United States which have been collected for twenty-three years by the *Chicago Tribune*. These statistics confirm the general impression regarding the rapid and alarming increase of lawlessness in our country. At present there are four and a half times as many murderers and homicides for each million of people in the United States as there were in 1881.

The Increase of Homicide
(*A Judge's Charge to a Jury*)

In his charge to the grand jury at Montgomery, Ala., recently, Judge Thomas uttered strong warning against the increase in the number of homicides in this country and emphasized the necessity for stricter enforcement of the law, especially in the punishment of crimes of violence. He quoted figures to show that the number of homicides in the United States for three years was one-third larger than either the total number of persons killed upon the American railroads in the same period or the total losses of the British army in the war in South Africa. The exact figures given by Judge Thomas were: Killed on railroads, 21,847; British loss in Boer war, 22,000; homicides in the United States, 31,395.

On Southern Conditions—Man-killing in the South
(*Editorial in the Charleston News and Courier*)

"The *Louisville Herald* printed some days ago 'a partial record' of the crimes of personal violence committed in Breathitt County in recent years. The 'partial' list shows that during the period named there were twenty-eight assassinations, or attempted assassinations, in that one county of the state of Kentucky, and that among the persons assassinated were three women. Last week one of the judges in Georgia declared from the bench that more homicides were committed in that state than in the whole British Empire. Here one person in a hundred is convicted and punished, while in England one in three is made to suffer.

"In South Carolina, as we have noted, the safest crime is the crime of taking human life. The conditions are the same in almost every Southern state. Murder and violence are the distinguishing marks of our present-day civilization. We do not enforce the law. We say by statute that murder must be punished by death, and murder is rarely punished by death, or rarely punished in any other way in this state, and in any of the Southern states, except where the murderer is

colored, or is poor and without influence. Now, this state of affairs cannot last forever. We have grown so accustomed to the failure of justice in cases where human life is taken by violence that we excuse one failure and another until it will become a habit and the strong shall prevail over the weak, and the man who slays his brother shall be regarded as the incarnation of power."

Statistics of Murders and Homicides in the United States

Below are summaries of the statistics of murders and homicides collected by the *Chicago Tribune* since 1881, to which I have already referred. The statement of the number of murders and homicides includes all deaths by violence reported in the newspapers of the various states and territories. These deaths were the results of quarrels, liquor, jealousy, love affairs, domestic troubles, robberies, resisting arrest, infanticide, insanity, self-defense, riots, strikes, outrages and unknown causes.

To more graphically convey the meaning of these figures for each year I have had them compared for Table I with the estimated population of the United States for each year since 1881. These comparisons reveal some interesting and important facts. For example, in 1881 the ratio of murders and homicides to population is one to 40,534 inhabitants, while in 1902 it was one murder or homicide to 8,955 inhabitants. It will be seen that during the years of financial depression immediately following the year of the panic, 1893, murders and homicides were more common than at any time before or since. In 1895 the ratio was one murder or homicide to 6,575 inhabitants. That year's record is the worst in the history of the country. In 1899 the record was better, but since that time it has been gradually growing worse.

TABLE I—NUMBER OF MURDERS AND HOMICIDES IN THE UNITED STATES EACH YEAR SINCE 1881, COMPARED WITH THE POPULATION

(From statistics compiled by the *Chicago Tribune*)

Year	Number of Murders and Homicides in the United States	Number of Murders and Homicides that would have been Committed if Rate per Million People had continued as it was in 1881	Estimated Population of the United States	Number of People for each Murder or Homicide	Number of Murders and Homicides for each Million of People	Number of Suicides in the United States	Number of Hangings in the United States
1881	1,266	1266	51,316,000	40,534	24.7	605	90
1882	1,467	1295	52,495,000	35,784	27.9	734	121
1883	1,697	1324	53,693,000	31,640	31.6	727	107
1884	1,465	1354	54,911,000	37,478	26.7	842	123
1885	1,808	1384	56,148,000	31,055	32.2	978	108
1886	1,499	1411	57,404,000	38,295	26.1	914	83
1887	2,335	1447	58,680,000	25,130	39.8	1387	79
1888	2,184	1479	59,972,000	27,460	26.4	1487	87
1889	3,567	1512	61,289,000	17,123	58.2	2224	98
1890	4,290	1545	62,622,250	14,597	68.5	2640	102
1891	5,906	1577	63,947,000	10,826	92.4	3331	123
1892	6,791	1608	65,191,000	9,599	104.2	3860	107
1893	6,615	1639	66,456,000	10,046	99.5	4436	126
1894	9,800	1671	67,740,000	6,912	144.7	4912	132
1895	10,500	1703	69,043,000	6,575	152.2	5759	132
1896	10,652	1736	70,365,000	6,658	151.3	6530	122
1897	9,520	1768	71,704,000	7,532	132.8	6600	128
1898	7,840	1802	73,060,000	9,319	107.2	5920	109
1899	6,225	1836	74,433,000	11,957	83.6	5340	131
1900	8,275	1882	76,295,000	9,219	108.4	6755	117
1901	7,852	1918	77,754,000	9,902	100.9	7845	118
1902	8,834	1952	79,117,000	8,955	111.7	8132	144
1903	8,976				112	8597	124
TOTAL	129,464	35,109				82,555	2611

Table II presents the causes of murders and homicides in the United States for the years 1894-1900. These figures are all taken from statistics compiled by the *Chicago Tribune*. One fact of great importance developed by this table is that half of the murders and homicides in this country result from quarrels and brawls. This fact should be kept in mind when reference is made below to the general failure of the police to preserve order and to prevent crime.

TABLE II—CAUSES OF MURDERS AND HOMICIDES IN THE UNITED STATES, 1894-1900

(From statistics compiled by the *Chicago Tribune*)

Year	Quarrels	Unknown Causes	Jealousy	Liquor	By Highway-men	Infanticide	Resisting Arrest	Highwaymen Killed	Strikes	Self Defense	Outrage	Riots	Insanity	TOTAL
1894	4536	1856	812	776	525	340	273	204	179	99	49	25	126	9,800
1895	4813	2466	1136	684	441	269	232	159	18	104	49	28	101	10,500
1896	5530	3561	401	159	200	300	52	100	10	48	28	10	253	10,652
1897	4638	2654	376	518	387	321	195	128	49	97	43	21	93	9,520
1898	3867	2697	205	207	222	248	147	82	22	33	5	25	80	7,840
1899	3309	1699	173	212	296	182	114	83	29	31	6	10	81	6,225
1900	4823	2187	210	289	239	159	83	85	58	28	8	13	93	8,275
TOTAL	31,516	17,120	3313	2845	2310	1819	1096	841	365	440	188	132	827	62,812

Month. 65: 168-79. February, 1889.

Shall We Abolish the Death Penalty for Murder?

W. C. Maude.

We will now state our reasons for advocating the retention of the death penalty as a punishment for murder.

One great reason for retaining capital punishment for the worst crimes (and scarcely any one in England would advocate any other for such men, say, as the Chicago anarchists, or the Whitechapel murderer, if he is ever caught and not found to be insane) and, indeed, we think for all cases of deliberate murder, is the almost insuperable difficulty of finding an adequate substitute.

Life servitude is never carried out in England, sentence being revised at the end of twenty years. Colonel Henderson before the Commission said it would take almost a century to get criminals to believe in its being carried out, and if it were carried into effect, prisoners with no hope would have

to be treated either as lunatics and made comfortable, or as wild beasts at the Zoological Gardens. "We have men now," he continued, "who are very little removed from wild beasts. I do not say they are mad, but they can never be approached by one man at a time; they are none the less obliged to be treated like wild beasts, and the warden always goes with, as you may say, his life in his hand."

This point has very recently been treated by Mr. William Tallack, the secretary of the Howard Association. He is a man of the greatest experience in the matter, having devoted over a quarter of a century to the investigation of all the branches of the great subjects of crime prevention and punishment. He gives it as his opinion that life servitude is impracticable, and suggests as a substitute, a term of twenty years' penal servitude with a subsequent period of supervision, in all but the most outrageous and alarming cases, for which he advocates the death penalty. We do not think that such a punishment for intentional murder is sufficient on any ground. In the first place, we should have to lower the whole scale of penalties in proportion, which would hardly be advisable. Then it must not be forgotten that it is a rule without exception, that the moment the penalty (either inflicted by the law or by public opinion) is lowered, the popular detestation of the offence is proportionally lessened. Lastly, it appears to us that the moral aspect of the matter requires greater severity. In order to show this, we must inquire what are the objects of punishment? And in answer we will accept perhaps the latest important dicta on the subject: those of Sir Edward Fry, L. J.

He considers the ends of punishment to be reformation, repression, and example, but looks upon these as secondary only to the great end which he calls the moral root of the whole doctrine, namely, association in some degree, of suffering with sin, in order to which there is a duty laid upon us of making this relationship as real, actual and exact in proportion as possible. His conclusions are that the deepest ground of punishment is this purely moral one; that there are other and independent reasons why society ought to inflict punish-

ment; that the measure of punishment may vary with the different reasons for its infliction; and that the highest of the measures of punishment for any given offence is that with which society ought to visit it.

Now we think that the death penalty when inflicted for murder pre-eminently answers these four ends of punishment. The immediate prospect of death certainly ought to work a reform in the condemned man's spiritual condition. The penalty itself obviously prevents further crime on his part. And we feel certain that the example would have great effect upon others, if the legal definitions of murder were so conformed to the popular idea of the crime, as to make a verdict and execution certain in clear cases of deliberate murder. We submit that when death was directly or indirectly intended or looked upon as probable by the perpetrator of the deed which caused the death, although of a different person from the one aimed at, morally the crime would be murder; but we doubt whether this would not be too wide for the British jury, and probably it would have to be confined now-a-days to cases of direct intention to cause death, coupled with an act which did cause death to some one, whether the person aimed at or not. We think even with some such definition as this, some provision would have to be made to enable a jury to find as a fact that the act was done through some violent and sudden temptation, and to give a judge, under such circumstances, a discretion to lower the penalty. Perhaps, also, the question of a provocation might be treated in this way instead of as it is now, and the limits of provocation as it affects this crime might be enlarged. These suggestions, however, are thrown out with the greatest diffidence, having regard to the difficulties with which the subject is beset; but our meaning is that murder in law should be made as much as possible like murder in common parlance, and that a discretion should be given to the judge in passing sentence, where, though the crime may clearly be murder, yet there exist real, and not merely extenuating circumstances in the French meaning.

Finally the punishment of death, more than any other which

could be inflicted for murder, associates the greatest offence with the greatest, or at any rate, the highest form of suffering, and thus realizes the exalted standard at which the learned Lord Justice was aiming when he said, "In a word, you can never separate the idea of right and wrong from the idea of punishment without an infinite degradation of the latter conception. Punishment is a part of justice if it is anything of moral worth; and I cannot bring myself to think of justice without regard to right and wrong, without regard to the utterances of the human conscience, without a thought behind all of an infinite and perfect Judge. To make justice a mere term for the enforcement of laws which have no moral colour, and rest only on the balance of the scales of pain and pleasure, is to rob it, to my mind, not only of all its dignity, but of all its meaning."

Nation. 16: 193-4. March 20, 1873.

Substitute for Hanging.

A life-sentence too, it ought to be said, would have no great advantage on the score of humanity over a death penalty. If it is certain, or if the criminal can get to believe that it is, it is terrible. On this point the reports tell a dismal tale. *Insanity* is *fifteen* times more prevalent among life convicts than among the others. Death or insanity, it is estimated, disposes in four years of 27 per cent of 'life' cases. If you put 100 men in jail for life, and took away all hope, the statistics warrant us in believing that in fifteen years there would not be a man of them left; so that our much sought for commutation, if it were really what it professes to be, would be the substitution of death by slow torture, for death at one stroke.

CAPITAL PUNISHMENT

New Review. 11: 190-200. August, 1894.

In Praise of Hanging. W. S. Lilly.

Secondary ends of punishment, as I account of it, are that it should deter others from crime and should reform the criminal. And in view of both these ends the argument for the death penalty, in cases of wilful murder, seems overwhelming. Death is the king of terrors. Human experience proves that it is the supreme deterrent. Signor Zanardelli, in the document from which I have quoted, adduces three arguments against this view. First, he quotes a dictum of Seneca, that "many hold death in contempt, regarding it as a rest from evils, while they are much afraid of imprisonment." But assuredly murderers are seldom of this philosophic temperament. Cruelty and cowardice generally go together. The most reckless in dealing with the lives of others are the most chary of their own. Signor Zanardelli's next argument is that the most atrocious criminals do not reflect on the probable punishment of their crime, but act recklessly, on uncontrollable impulse (con impeto irrefrenabile) and would sacrifice the universe to a sensation. To which it may be replied that the worst murders are not those committed in the heat of passion, but those perpetrated in cold blood; and that, in any case, the vision of the scaffold or the gallows is more fitted than anything else to check homicidal recklessness and to control homicidal impulse. "I don't care what I get so long as I don't swing," was the expression of a recent assassin, who unfortunately, did not "swing." The sentiment is common to men of blood. Lastly, Signor Zanardelli urges that the ferocious punishments of old times, so far from preventing serious crimes, made them more frequent. But that unjust punishment failed to deter, is no argument against the deterrent effect of just punishment. To which may be added that the consequences of the abolition of the death penalty in Italy are not reassuring. It is stated that there are now in that country between three and four thousand convicts undergoing sentences of life imprisonment for murder—sentences which are never commuted.

It would have been far better for these unhappy men themselves, in the vast majority of cases, that they should have suffered the supreme penalty. Mr. Tallack, in his work on "Penological and Preventive Principles," well points out that "death itself may be mercy compared with the prolonged injury inflicted upon the spiritual and mental powers, by means of the hopeless misery of the solitary cell, on the one hand, or by the corruptions of filthy and blaspheming convict gangs on the other." A process thus continued may ultimately be as *real* an execution of death, but by slow operation, as the more visible and instantaneous deprivation of life. . . . The Italians in their hatred of one form of capital punishment have merely substituted another and a worse form." This is perfectly true. A sentence of life imprisonment is merely a more cruel and more cowardly mode of inflicting the death penalty. Hence, perhaps, the favor it has found with the Italian people, as pandering to their characteristic vices. It is also, in the vast majority of cases, a sentence of moral and spiritual death. There can be no question whatever that the most hopeful means of working the reformation of a murderer—and by reformation I mean the conversion of his will from bad to good—is supplied by the certainty of his impending execution. However seared his conscience, however atrophied his moral sense, however blurred his vision of judgment to come, this certainty often quickens him into new spiritual life and works, as Schopenhauer expresses it, "a great and rapid change in his inmost being." "When [condemned criminals] have entirely lost hope," this keen observer of human nature adds, "they show actual goodness and purity of disposition, true abhorrence of committing any deed in the least degree bad or unkind; they forgive their enemies, . . . and die gladly, peaceably and happily. To them, in the extremity of their anguish, the last secret of life has revealed itself." They obtain "a purification through suffering."

North American Review. 133: 534-59. December, 1881.

Death Penalty. George B. Cheever, Samuel Hand and

Wendell Phillips.

REV. DR. CHEEVER.

The basis of argument for the death penalty against murder is found, along with the reason given for it, in Gen. v. 6: "Whoso sheddeth man's blood, by man shall his blood be shed; for in the image of God made he man." Nothing is plainer, by consent of the most accurate critics and scholars, than the translation and interpretation of this sentence. 1. The Creator is its author. 2. It is his benevolent statute for man's protection against the violence of man, because man is made in the image of God. 3. It being an acknowledged legal axiom that a law is in force while the reason for it remains, its universal and perpetual obligations are demonstrated. 4. The origin, institution, sanction, and right of human governments with penal inflictions are here determined by authority of the Creator, and not by any imagined compacts of mankind. 5. The nature and requisitions of justice, righteousness, equity, duty, expediency are in the terms of this legislation. The social obligations of mankind, and all governmental responsibilities, being referred exclusively to the will and word of the Creator, and the dictate of a conscience toward him, there is no other possible safeguard from men's evil passions. 6. The grasp of this law—thou shalt love thy fellow-creature, in God's image, as thyself—is upon all human interests, temporal and eternal, as revealed by God. Obedience to it would insure the highest and most perfect protection of all races in virtue and happiness. It is the very beginning of God's humane legislation for the new world, after a thousand years' demonstration of incurable hereditary depravity in the old, and the consequent perversion and abuse of God's lenity toward Cain, filling the earth with violence. 7. Every state, being a trustee for God and the people, is bound to see to it that the people for whom God's whole law is promulgated are taught these truths with the consequent sacred-

ness of law and conscience toward God, were it only for the security of men's households and their own lives. If God's covenant with mankind had been kept conscientiously by mankind, there never would have been another murder on earth from the time of the deluge to this day, nor even a religious persecutor. For God that made the world hath made of one blood all nations of men, and hath determined the times and bounds of their habitation, with this intent, that they should seek after God, and worship him in freedom, as being his offspring, who giveth to all life, and breath, and all things. And the powers that be are ordained of God, whose minister in an earthly government, prophetic of the divine, beareth not the sword in vain. 8. The death penalty was to be restricted to the crime of murder, and thence all penalties were to be graduated according to the offense, with the same unmistakable regard to the divinely constituted rights of family, character, property, and person, and the entire freedom and independence of a conscience toward God. With the same extreme of carefulness and exact justice, and for the perfection of its efficacy, the penalty was to be guarded from any possible mistake in its application through reliance on merely circumstantial evidence. Thus the legislation was as perfect as the benevolence and justice of God could make it.

Evidently there was required, in the foundations of a new social state, a penalty against murder to the last degree dreadful and deterring, fatal and final, with all the powers of human government ordained and pledged for its execution. God himself would make Cain's own dread of being murdered, through all men's sense of justice, inextinguishable, by having it established as the first law of humanity that, if any man destroyed another's life, his own life should go for it. And all the fiends of remorse, detection, and a righteous vengeance, with all the energies and vigilance of human selfishness itself, aghast with horror, should combine to arrest and exterminate the miscreant. This uproar of indignation and wrath was what Cain himself expected, when driven forth from the presence and protection of God.

The penalty is restricted to murder, though some crimes

against personal rights are equivalent to murder, and produce it, and even worse, as for example, slavery, and in consequence, all the infinite horrors of the slave-trade. And, therefore, there shines forth, illuminating and illustrating the law against murder, like another sun risen on mid-noon that other and later unparalleled Hebrew law in behalf of the enslaved: "He that stealeth a man and selleth him, or if he be found in his hands, he shall surely be put to death." This is the polarized light of the first penalty, crystallizing for all generations the meaning and insurance of the primal blood-statute; for no man in his senses will pretend that this grand edict of God's protecting and avenging mercy was never intended as a law, but was merely a prediction of the prevalence of legal murder. And so of the statute, in such absolute, imperative terms: "Ye shall take no satisfaction for the life of a murderer which is guilty of death, but he shall surely be put to death." (Num. xxxv. 31.) There was this insurance of the penalty laid upon every generation. It grew into one of the ever-present Eumenides in men's minds, as in the Book of Proverbs, "A man that doth violence to the blood of any person shall flee to the pit; let no man stay him." Hence, also, the careful and just definitions of what constitutes a murderer, and the requirement of witnesses as to the fact of the crime, evil intention being always essential, and mere circumstantial evidence not to be relied upon.

Malice aforethought once proved, the crime is demonstrated, and nothing shall save the murderer, not even the city of refuge provided by God himself for a just trial, nor the intervention of any pardoning or interceding power, nor the altar of God. "Thou shalt take the murderer from mine altar, that he may die." (Ex. xxi. 14.) If not, if the murderer is let off with his life, then the whole land remains guilty, and the blood of the murdered man crieth unto God from the ground; for the primal curse is on this crime against God's image and mankind, and no atonement or restitution can be made for it by man; none shall be accepted.

This is the secret of some of the most terrific tragedies of retribution by the Divine Vengeance otherwise so unaccountable,

but as startling and warning for nations as for individuals. (See II. Sam. xxi. 1-14. See, also, the awful charge laid upon Solomon by David on his death-bed, II. Kings ii. 5, 6, 31, 33.) These are illustrative instances of that profound intuitive sense of the sacredness of retributive justice, manifested by the inhabitants of Melita in the case of Paul. "No doubt this is a murderer, whom, though he hath escaped the sea, yet ? ?? ? — divine vengeance—suffereth not to live." This is the wonderful inspiration of similar classic utterances, so abundant, solemn, and familiar in the loftiest heathen tragedians and philosophers, whose beliefs in the providence of a just and righteous God were shared by these uncultured but thoughtful barbarians.

This law is the perfection of heavenly mercy itself, taking all right of revenge away from individuals and reserving the retribution for injuries as belonging to God's own attribute of impartial universal justice. The Sermon on the Mount is not more entirely God's law of love for all mankind than was the statute given through Noah for the whole world's good a covenant of divine wisdom for the education of the world in righteousness. It sets forgiveness in the heart of every human being, and proclaims revenge as murder. So the handwriting of God in the rainbow binding the storm was but the prophecy and prelude of that eternal melody in the song of the angels, "Glory to God in the highest, on earth peace, good-will to men," and of that celestial doxology, belonging to the perfection of all religion, in the worship of faultless prayer, "For thine is the kingdom, the power, and the glory, forever. Amen." As everything needful for mankind to ask is in our Lord's Prayer, so in that august, comprehensive transaction of God with Noah there was the perfection of all moral discipline, and just and peace-assuring criminal jurisprudence, by which men needed to be ruled on earth and educated for citizenship in heaven.

Thus, all retributive punishment, and all the securities and arrangements of God for it, are a concentration of all the lessons and energies of true moral discipline. All right training of the mind, the accurate tracing of consequences, an equitable connection of cause and event, and all disposal of awards, all

retributions for guilt, must be grounded, first of all, in absolute justice. Otherwise, if utility alone were wisdom, and men the judges, the world's Caiaphases of expediency would become its glorified statesmen and saviours.

Now, the impossibility for any but an Omniscient Being to know and measure the absolute desert of every action, throws the whole power and right of governmental retribution upon the revealed authority and will of God, making government itself a divine, paternal, protecting, educating institution, maintaining its permanence and right by a conscience in the people instructed toward God. The knowledge of God's law is in such education, securing obedience, independence, liberty, prosperity, and whatsoever things are true, honest, just, pure, lovely, and of good report. The God of peace is in and with such a socialism, and not the savageness and selfishness of the survival of the fittest. And this is the mighty educating power of law proceeding from the bosom of God as the Father of his intelligent creatures, and acknowledged and executed by human governments.

The efficacy of the penalty against murder can be demonstrated (1st) by restricting it to murder, and (2nd) by making it immutable and certain. The man who murders another kills himself. When the most hardened villain is made sure of that, who will strike the blow? Make the penalty exceptional and inevitable, as it ought to be, and murder would be unknown under a government of infallible justice. The divine edict would be found of such deterring efficacy that the government would never need to execute it. The known certainty of the penalty would put a stop to the crime.

But the certainty that a murderer cannot at any rate be punished with death would inevitably increase the crime, presenting such a powerful temptation to murder in self-defense, during the commission of any other crime whatever. This would make murderers out of common villains. It would tempt the midnight burglar even to begin his work of robbery with assassination for security in the process, and then to complete it, double-locked from discovery by the death of all the witnesses.

The law of God says to the criminal, Become a murderer, and you are lost. The abolition of the penalty says, Murder, and you are saved. The removal of the dreaded penalty holds out an inducement so diabolical to the highest crime, that it seems incredible that any humane form of socialism should entertain it for a moment. You may save your own life, it says, by killing the witnesses against you. You can only be imprisoned, even if you kill; but if any one tries to kill you, you have the right to kill him. You may even escape condemnation, if tried, by the plea of sudden insanity, into which the threat of death and the desire to escape are affirmed to have driven you.

Kill, and you may be defended, even by charge of the judge, and verdict of the jury, on the ground of sudden, irresistible frenzy, or delirium from intoxication, and therefore not punishable. But the stealing of a million dollars is never thus protected; a well-planned burglary, never. Therefore the assassin has the advantage. The killing of the owner of the money may be a sudden madness; it may be even argued that it was accidental, or in self-defense, without intention to kill, and therefore not punishable: see the trial of Webster, for the murder of Parkman; also the case of Colt. If the owner had chosen, he might have saved his life by the sacrifice of his property, and so prevented the murder. By attempting to defend his property, he has compelled the burglar to become a murderer, because that crime was the safest—an insurance against punishment, all things considered, having made it profitable.

Thus, but too surely the abolition of the death penalty would offer a recompense to the highest criminal sagacity and boldness. And the more hardened the criminal may have become, through the laxity of law and the absence of any appeal to conscience and to God, the more the law defends him, in case of any midnight conflict; and he knows this beforehand, and reasons accordingly. If he breaks into a house, and stabs its sleeping owner, that he may not testify against him, his victim is abandoned by the law to the death-blow of the murderer,

who secures his own life by taking that of the sleeper, while the assassin is as effectively protected as if a reward of his ferocity had been guaranteed.

Then, again, the moment the murderer is being tried for his life, the sympathies of the public and the press are moved in his behalf, so that even the sternest jury feel the impulse; and, if they convict, extenuating circumstances are pleaded; and even if the murderer is sentenced, petitions for reprieve, for a new trial, for pardon, for commutation of the punishment, are gotten up, and powerful reasons of humanity are argued, which, if resisted by the governor, bring upon him and upon the law itself the accusation of being the actual murderers.

And the more effectively God's law and a future final retribution are denied, or obscured in the murderer's consciousness, by his never having heard of these truths in the common schools through which he graduated, and by the legal and social habit of denying the authority of the Scriptures and of God over both government and people (a habit which the exclusion of positive religion from the state, its constitutions, and its schools, fosters from childhood), the more rational and righteous it appears, in his own view, to take care only of himself, no matter what becomes of others. He has never been taught that God requires murder to be punished by death, much less that there is an endless retribution, in another world, for crime unrepented of in this.

Had the state done its duty in his education, he would never have been a murderer. It is moral assassination by the state to have let him grow up in such brutality. A law so benevolent and illuminating as that of God against murder, with its very reason grounded in the immortality of man and his accountability to God, and his obligations of love to his fellow-man in God's image, binds the government to teach its whole meaning, and to proclaim it with all the light thrown upon it from God's successive revelations, from the precedents broadening down through ages, and from the final teachings of Christ. Government, in assuming the authority to punish,

is bound to flash the whole lightning of the statute to the uttermost depths of society, till its divine meaning penetrates the entire mass.

To withhold such instruction, and thus educate the masses in ignorance both of God's claims and care, and then and thus to apply the penalty of death for crime, is at once such contempt of God, and such a process of cruelty and despotism against man, as would make government an agency of perdition. The acknowledgment of responsibility to God for the protection of human life, and for the enlightenment and freedom of the conscience, is incontrovertibly, therefore, the duty of all governments. Law is thus enthroned in God, and God in law; and the state, for insurance of its own permanence and usefulness, must wear its appointed seal and robes of majesty as "a power ordained of God," proclaiming that it maintains an authority received from God, by the enlightened conscience of its citizens toward God. This is the only perfect security for human freedom. The law, without such education of the people, and without the appeal to God, becomes a defiance and violation of his will. Its efficacy depends on its divine sanction being taught, and necessitates that teaching by the state. How otherwise can any government be honest, or any of its penalties just, humane, and reformatory?

Immediately after the dreadful murder of our revered and beloved Lincoln, President Garfield, then a member of the United States Congress, delivered in New York an address on the duty of the government and people, closing with these memorable words: "Love is at the front of the throne of God; but justice and judgment, with inexorable dread, follow behind. This nation is too great to look for mere revenge; but for the good of the future I would do everything."

In the United States, amidst increasing perils from the socialism of ignorant masses, annually multiplying by millions; with all conflicting infidel speculations and political theories, from Nihilism to Mormonism, let loose, and sensual and intoxicating habits unrestrained; with the suffrage universal, and violent factions, and strifes for office, gain, and power univer-

sal also; with scientific dynamites of revenge inviting every disappointed villain's handling—the proposed abolition of the divine law against murder would be more inhuman, reckless, and unjust than it would be to make a breach in one of the dikes in Holland, letting in the sea. God proposes to abolish the crime; man to abolish the penalty. God seeks our deliverance from sin; man our evasion of its consequences. Self-government under God is heaven. Self-government without God is anarchy and hell. Which will we choose?

MR. HAND.

The dispute as to capital punishment is, at the present time, narrowed down to the point whether it is permissible, justifiable, and expedient for the sovereign power, in any case, to punish the crime of murder by inflicting death upon the murderer.

Of the opponents of capital punishment, some deny the abstract right of government deliberately to destroy a human being, under any circumstances; some, without questioning the right, deny that a past and irremediable offense of any sort will justify such action; and others deny the expediency of the punishment for murder or other crime.

The theory once so generally received, that men, originally in a state of nature, voluntarily entered into a social compact, yielding some of their natural rights in return for protection, and that this was the origin of government, is now exploded, and it has been shown by the historical method, applied to social science, that social and political organizations have quite other beginnings. It seems to be quite needless to discuss the question of the natural, inalienable right of an individual to his life, not forfeitable, and over which government can acquire no control. It is necessary to be conceded not only that the individual may, by conduct absolutely inconsistent with the public safety, forfeit his life to the sovereign, but that the sovereign may call even upon the blameless citizen, to sacrifice his life for the common good and in resisting the public enemy.

The question, therefore, of capital punishment for murder

is one, not of power, but of justice and expediency. I, for one, believe that for that crime such penalty is necessary, justifiable, and expedient, and should be retained.

For many centuries, indeed, in all the principal nations of Europe the death penalty was inflicted for various grades of crime against property as well as person, and, especially in England, for those even of trivial character. But now, in most of the civilized governments of the world, that punishment has, with rare exceptions, been reserved for wilful murder—the deliberate and malicious destruction of a human being. As I have said, this penalty for such crime I think is necessary and proper, and should be retained.

Those who are opposed to capital punishment may properly rejoice that, in the last hundred years, so large a domain of lesser crime has been freed from the terrible punishment of death. The urgent reasons for the abolition of the death penalty in the case of crimes against property, and even most of the serious crimes against the person, when not accompanied with a murderous intent, are abundant, but are certainly not applicable to the crime of murder. These bloody laws were justly repealed as in violation of the fundamental principles of penal legislation established in modern times. They violated the principle that absolute necessity should alone authorize the destruction of mankind by the hand of man; that it is manifestly just that punishment should be graduated according to the enormity and malignity of the crime; that to apply the extreme penalty to all grades confuses the public mind as to the atrocity of the misdeeds themselves; that the disproportion of the punishment to the offense arouses pity for the offender, and creates indifference to the offense, and hence gives impunity to crime and contempt for the law; and that the infliction of the same punishment for stealing a shilling and for murder tends to lessen the horror and aversion naturally felt for the convicted perpetrator of the latter.

Surely, to punish with death, as was done in England before the reform of its penal laws, the association with gypsies for a month (see statutes of the fifth year of Elizabeth's reign,

chapter ten), the writing an anonymous letter demanding money (see statutes of ninth George I., chapter twenty-five), the stealing of goods to the value of a shilling, the doing malicious damage to Westminster bridge, and other like offenses, is not defensible upon the same ground as the punishment of the awful crime of murder by the same penalty. And it cannot be contended that the repeal of the death penalty as to all crimes of a lower grade—a penalty, if inflicted at all, unquestionably to be reserved for the gravest offenses, and obviously disproportionate to any other—affords any argument for its abolition in all cases, however atrocious. The general gradual amelioration of the penal laws in Christendom for years past, and the substitution of other lesser punishments for the capital one, cannot, therefore, of themselves be insisted upon as an argument for total abolition of the latter.

I have had no opportunity to see the contributions on that side of the question in the present conference, and, of course, cannot anticipate whether such an argument may be adduced. It has, however, sometimes been used, and the mere partial abolition for the lesser crimes has been urged with some effect in persuading the public that "hanging for murder" was a remaining relic of barbarism existent in these modern days, and stood a last incongruous and monstrous monument of the illogical ferocity of our ancestors in applying death as the invariable punishment for offenses of every grade.

Aside from the suggestions already made, another answer to this argument may be drawn from the Scriptures. For, by an injunction to Noah and his family, the progenitors of the human race, given after the deluge, it was divinely commanded that "whosoever sheddeth man's blood, by man shall his blood be shed." This solemn sanction for punishing murder with death certainly is wanting as regards all other crimes.

Indeed, this argument has a much larger application. It is impossible to see how, in the minds of those who believe in the divine character of this record, in its absolute verity and its obligation binding upon humanity for all time, this command does not put an end to the dispute, and render fur-

ther debate useless. Unlike many provisions to be found in other parts of the Pentateuch promulgated as parts of a penal code for the government of the Jews, here is nothing local, nothing temporary, nothing merely regulating the conduct of a particular nation under peculiar circumstances and in a particular country. It was not intended for nor addressed to any particular tribe or people, but was a solemn compact with the new father of the human race, expressly commanding and binding him and his descendants, in all times and countries, to punish the murderer with death. It was a decree necessarily *semper, ubique, omnibus*.

Similar injunctions to the Jewish people, referred to in the opening paper of Dr. Cheever, might repeat it in language more precise, but could not enlarge or intensify its obligation upon all men. It was the first great universal *law* promulgated to the world.

But that we deal, in these days, with a generation inclined to look with scant credulity upon the book of Genesis, its deluge, its ark, and its Noah, must be confessed. By some, at least, of the opponents of capital punishment, arguments other than the divine law announced to Noah, and its binding force on the world, will be demanded. By them, its authority will be denied, its application to modern society perhaps scouted, and its punishment for murder likened to the Old Testament punishment for witchcraft.

To these objectors it may be said that there are sufficient reasons for the punishment of murder by death in the nature of the crime and the necessity of the case. Something, indeed, should be allowed to the general usage of all civilized peoples. It creates at least a favorable presumption. The barbarous Frank, Saxon, or Goth valued human life in money. A murder was redeemed by a fine. The civilized Englishman, Frenchman, Italian, and Spaniard punish it with death, and for that crime have steadily retained that extreme penalty, while abolishing it in many other cases. With civilization came the idea of the enormity of the offense and its danger to society. From the moment the notion of a crime against the govern-

ment rather than a mere injury to the family of the murdered man was formed, the necessity of the death penalty was recognized.

But, passing this suggestion, obviously the first duty the sovereign (whether a monarch or the sovereign people) owes to the citizen is the protection and preservation of his life from violence. In the absence of such protection, the peace and the order necessary to the social existence must disappear, and the security of the individual, indispensable to all social progress, is at an end. It follows that every safeguard and preventive possible in the nature of the case to be provided against the crime of murder, it is the manifest duty of the government to provide.

Within certain limitations, it may be laid down as generally true, that the legislature is justified in the infliction of any degree of severity necessary for the prevention of this great crime. Such severity is manifestly but a measure of self-preservation. The prevention of all crimes should be the main (although, as I suggest below, not the only) object of the law-giver. But, as to murder, it is an object necessary to the very existence of society, that its total prevention should be measurably attained.

The punishment of death is unquestionably the most powerful deterrent, the most effectual preventive, that can be applied. Human nature teaches this fact. An instinct that outruns all reasoning, a dreadful horror that overcomes all other sentiments, works in us all when we contemplate it.

The wearied and most loathed worldly life
That age, ache, penury, and imprisonment
Can lay on nature, is a *paradise*
To what we fear of death,

says Shakespeare.

The ancients exercised a horrible ingenuity in punishments. They inflicted crucifixions, flayings, burnings, boilings, impalements, scourgings, exposure to wild beasts, and other tortures, which exhausted the invention of men; but that death was the final end of each gave even these their most awful terror. They shocked decency and humanity, and were, besides, useless refine-

ments of cruelty, as preventives of crime, since the mere death of which they were the means outweighed all other horror. Take away that, and they were but temporary pains.

It has been found, by the experience of many nations and many ages, that death alone impressed the imagination of the people, and alone carried so vivid a horror, as to check the malignant passions and the deadly hand of the murderer.

It has been sometimes objected that facts do not bear out this assertion; that where the capital penalty was abolished, the crime of murder did not increase; that as its abolition in England as a punishment for theft and other lesser crimes did not result in an increase of those, the same is found to be the consequence of total abolition. The space allowed me here does not permit a discussion of the statistics collected on this question. Suffice it to say, that the results, as shown from the reliable records, do not sustain so paradoxical a proposition. It would be in direct contradiction to the ineradicable instincts of humanity, if it were so. The loss of life is universally and instinctively dreaded beyond all other calamities by all classes of men—the rich and poor, the upright and vicious, the learned and ignorant alike; it is incredible that its certain infliction as the inevitable consequence of an illegal act would not have the supremest influence in preventing that act.

It may be true that communities are found, naturally law-abiding and tranquil, where capital crime is absent, although no death penalty exists; and again, that there are turbulent communities where murders are more frequent, although the laws are nominally severe. But it cannot be claimed, unless the laws are enforced, that such facts offer any argument. There can, of course, be no prevention of crime by the fear of death among a people where crime is rarely punished at all. Death, although pronounced in the statute book the punishment for murder, can have no terror for murderers when it is never inflicted. A known *brutum fulmen* can have no effect except to excite contempt.

This punishment is the only sufficient preservative to so-

ciety; but to preserve, it must be inflicted. The convicted murderer cannot, of course, by his cutting off restore the murdered man to life, nor prevent the crime which he has already committed, but the certainty that such awful punishment will inevitably follow such crime is the preventive influence. If, as is unfortunately and disgracefully the case in certain sections of our own country, the crime of murder is hardly ever followed by a judicial execution, if the occasional lawless destruction of the murderer without trial is the only punishment he need fear, and depends wholly upon the mere chance momentary excitement of the community collected as a lynch-law mob, death, whatever may be the words of the statute book, is *not* there the actual punishment of murder, and, of course, the fear of it cannot operate to deter the would-be assassin.

Comparisons of such communities, where the death penalty is decreed by law but scarcely ever executed, with more quiet states, may permit a deceptive argument, but are certainly not proof against the efficiency of capital punishment. The question is whether a punishment, reasonably certain to be the result of an offense, will deter from its commission—not whether, in a lawless community, a law never enforced can be effective as, in itself, a scarecrow.

But it is said that, even in law-abiding communities, murderers escape justice because of the reluctance of the tribunals to impose an irremediable and irrevocable punishment. To some extent this is true; to the extent that there never should be conviction of a capital offense to which so awful a punishment is necessary, except in the clearest case, it ought to be true. But in most of those trials where an acquittal has been a clear failure and mockery of justice, it will be found that the juries have refused to find any guilt, although a verdict of manslaughter, punishable only with imprisonment, would have been entirely legal. In fact, the cases were those in which the mind of the tribunal was so warped by some prevailing prejudice or sympathy, that their verdict was against the fact and the law, and would have been so, whatever were the penalty of conviction.

Indeed, an answer to these objections is furnished from actual experience, by the example of a great nation. In no country, since the reform of its criminal law, does the capital punishment more certainly follow the offense than in England; in no other country do juries more implicitly obey the law, and, in clear cases, find the murderer guilty, in disregard of all passing public excitement. And in no other country has human life become so safe, so sacred, and so completely protected. It contains a population who are subject to the most violent and brutal passions; immense inequalities of wealth and poverty afford strong temptations to crime; and yet, by the certainty of the death penalty, the crime of deliberate murder is, more perhaps than in any other country, completely prevented.

But it is objected, why were not theft and robbery extirpated there when the same penalty was applied to them, and why have these crimes not greatly increased since the abolition, as to them? The answer I have already suggested. The sense of justice was shocked by the discrepancy between the comparatively trivial crime and the disproportionate punishment. For that reason, judges and juries vied with each other in dodging the letter of the statute, and mitigating the punishment, and the law became almost a dead letter.

But it is sometimes said, "To hang a man is a very poor use to which to put him." If the sole object of government is to deal with a red-handed murderer as "an erring brother who has sinned from ignorance, but is to be pardoned, elevated, and redeemed"; and to aim solely at his welfare, this saying is, I admit, puzzling. If no regard is to be paid to the public safety, except in the correction and amelioration of the murderer as one of the public; if the only purpose to be considered is the instruction of the poor fellow by suitable teaching, so that, perchance, he may be taught and persuaded "not to do so again," this saying has some force. But, even then, the substitutes suggested by the abolitionists do not avoid the difficulty. Perpetual imprisonment is hardly a more profitable use to be made of a man than hanging him, and such use for a hardened villain is perhaps

somewhat more unprofitable to an overtaxed community than fairly putting him out of the way at once.

But this sentimental view of the criminal is a vicious one. The writings of Victor Hugo, and others of like tendency, have done much to foster it, and it is, in the present time, dangerously weakening the sinews and paralyzing the arm of justice throughout the world. Carlyle thus vigorously sums up the case:

A scoundrel is a scoundrel; that remains forever a fact; and there exists not in the earth whitewash that can make the scoundrel a friend of this universe; he remains an enemy, if you spent your life in whitewashing him. He won't whitewash; this one won't. The one method clearly is that, after a fair trial you *dissolve partnership* with him; send him, in the name of Heaven, whither he is striving all this while, and have done with him.—*Essay on Model Prisons.*

I have already suggested that prevention, although one, was not the only purpose of the infliction of penalties.

If prevention was the sole object to be sought, in disregard of all other considerations, some strange consequences would result; and there would be no limit to any severity, if found effective, to deter from crimes even of the lighter grades. Attainder of blood, confiscation of property, would become justifiable. Indeed, the doctrine, certainly unsound, of Justice Blackstone (Commentaries on the Laws of England, Book IV., pages 16 and 240), that the severity of the law may be in proportion to the ease with which offences are committed; and that "it was but reasonable that, among crimes of equal malignity, those should be most severely punished which a man has the most frequent and easy opportunities of committing—which cannot be so easily guarded against as others, and which therefore the offender has the strongest inducement to commit," would be difficult to deny. Petty larceny is a crime "the least easily guarded against," and which the offender has the "strongest inducement to commit," and therefore, with a view to prevention alone, might be visited with the severest penalty.

In truth, there is inherent in all punishment for crime the idea of executing justice, of rewarding the offender according to his misdeeds. It is an idea entirely separate from and independent of any notion of prevention, or even of public safety.

"Vengeance is mine and I will repay, saith the Lord," but

vengeance—righteous vengeance—is the right and duty of the state. The state is, in this respect, the representative of the Divine Governor. To it, the sword of justice and retribution is delivered. By it, it must be wielded.

Capital execution upon the deadly poisoner and the midnight assassin is not only necessary for the safety of society, it is the fit and deserved retribution of their crimes. By it alone is divine and human justice fulfilled.

This is the crowning and all sufficient ground for the destruction of the civil murderer by the civil power.

Although it should become absolutely impossible that any president of the United States should hereafter be assassinated; although it could be demonstrated that the death of the assassin was, as a measure of prevention merely, absolutely needless; although the sentimentalists should cry out that the murderer was a hardened villain, as unprepared to die as Barnardine, "who apprehends death no more dreadfully, but as a drunken dream, careless, reckless, and fearless of what's present or to come," and that years were needed to instruct and ameliorate him—would not the heart of every sane citizen in the republic feel that the crime must be expiated by the last punishment, and that until this was done, a solemn duty of the state was neglected, and "the voice of blood would cry from the ground" for justice? Passion, prejudice, devilish revenge there must be none. The individual is presumed innocent. The law proceeds calmly, impartially to investigate the fact. But if, after fair trial, after clear proof, he stands convicted, then let him meet the just deserts appointed by eternal justice for such as he.

The law wages no war upon any citizen. It imposes a fit retribution only upon the cold-blooded villain who has malignantly destroyed a human being. Its blow falls upon him only who has been found by legal trial and declared by legal judgment to be such a villain. Its act is far from all passion, all mob violence. It is the effect of a holy, just indignation, not hot or temporary, but abiding and eternal.

Government is a trust, and there can be no higher exercise of that trust than the cutting off, in open day, before high heaven,

solemnly and with deliberation, the man proved unworthy of a longer existence among his fellows.

MR. PHILLIPS.

I am glad to join in any debate with so earnest and brave a soul as Dr. Cheever—a man trained to the severest logic; every one of whose words comes from the depths of stern and conscientious conviction—a prophet who, in perilous times, and at great risk, prophesied right things, not smooth things, to a rebellious people. He is no carpet knight, and debate with him is no sham fight.

Late events have intensified interest in this question, and directed public attention strongly to it. This, then, is the God-given opportunity for correcting wrong opinions and impressing right ones; the minds of writer and reader are both hot, and every argument suggested welds itself into the public thought with solemn and effective power, food for deliberate reflection in cooler moments. To get men to listen is half the battle, and the hardest half, in all reforms.

If any one, at such a moment as this, doubts the correctness of public opinion on capital punishment, now is the hour, above all others, for him to utter his protest and enforce his views.

The word *punishment*, capital or any other, when used in reference to human government, is a mistaken and misleading term. Punishment has relation to guilt. Only that power, therefore, which can measure guilt is competent to affix penalty and to punish. As Dr. Cheever says: "All penalties were to be graduated according to the offense"; "retribution for guilt must be grounded first of all, in absolute justice"; and he admits the "impossibility for any but an Omniscient Being to know and measure the absolute desert of every action."

"It is from an abuse of language that we apply the word *punishment* to human institutions. Vengeance belongeth not to man" (Eden, Princ. of Penal Law).

Of course no human official can measure the strength of inherited tendency toward any act, criminal or any other; the power of temptation, the moral and intellectual train-

ing of the individual, or of the community and age in general, which go so far to form the moral sense of a man and educate his conscience; the circumstances, in fact, which aggravate or lessen criminality. Only Omniscience knows these. Yet these make it a fact that one man may commit murder with less moral guilt, in the eye of God, than another steals, or lies about his neighbor.

It will relieve some of the difficulties of this question if we rid ourselves of this idea of punishment, so far as human governments are concerned. Human governments are only authorized to restrain and chastise an offender, with the purpose and motive of preventing the recurrence of the harmful act he has done. To prevent the individual from repeating his offense, and to deter others from following in his steps—these are the only ends which human government can rightfully have in view. Governments are authorized to inflict pain in order to prevent evils, not with any idea of punishing guilt. Until human government has the plummet of Omniscience to sound the depths of the human soul, its weakness and its wickedness, its too ready yielding to temptation, or its vain effort to resist it—until then the attempt on its part to punish guilt is idle, because out of its power, and criminal, because sure to make it work injustice.

“Punishment,” says Dr. Cheever, in his “Defense of Capital Punishment,” printed in 1846, “is sometimes called for apart from the question whether it be useful or not”; and “There is such a thing as retributive justice, apart from the purpose of security against crime, or the necessity of the guardianship of society and the universe.” And Theodore Frelinghuysen affirms that “the culprit is doomed to suffer because he deserves to suffer.”

Such statements as these have their proper place in the pulpit and in discussions touching the moral government of the universe. But they mistake entirely the limited ability and authority and the proper function of human governments.

The statute of Pennsylvania, 1794, well says: “The design of punishment is to prevent the commission of crimes, and to re-

pair the injury that hath been done thereby to society or the individual."

With a more Christian philosophy than that which underlies the remark of Frelinghuysen, the pagan Seneca says: "Nemo prudens punit quia peccatum est, sed ne peccetur"; or, as Judge Buller once roughly translated it: "Prisoner, you are not hung for stealing this horse, but that horses may not be stolen."

With this view of the purpose of punishment all the great writers on penal legislation agree,—Franklin, Beccaria, Bentham, and others,—and all those who have discussed this special question,—Montaigne, Livingston, Rantoul, Romilly, Brougham, Montagu, Cobden, and the rest. As Wordsworth sings:

Fit retribution, *by the moral code determined,*
Lies beyond the State's embrace.

But it cannot be denied that New England and the states planted by her sons ignore this principle, and punish murder with death, chiefly because men believe they are ordered so to do by the Old Testament, in that verse of the so-called covenant with Noah usually translated: "Whoso sheddeth man's blood by man shall his blood be shed." (Genesis ix. 6.)

For myself, I am free to say that I think this whole covenant refers exclusively to food, and the verse just quoted, with those which precede it, is a prohibition of cannibalism—nothing more.

But, waiving this, let me submit:

First. The theory of government, as universally held in this country, is that government is a "social compact,"—"a voluntary association of individuals." Therefore, as an individual has no right to take his own life he cannot confer on government any right to take it. Indeed, M. Urtis—who published in Paris, in 1831, a very able defense of capital punishment—grants his opponents that, if he allows government this right, he is logically obliged to admit the right of suicide.

This principle, however,—that society has no right to take life as a method of punishment,—is the opinion held by Lafayette, Gilbert Wakefield, J. Q. Adams, Franklin, Beccaria, and many of the ablest writers on social science. Without insisting on it, at this point of our argument, is it fair to claim that on so momentous a question any supposed command to the con-

trary should be unequivocal, positive, clear, and abundantly proved.

Dr. Cheever acknowledged years ago that this Scripture proof was "somewhat limited, though plain and powerful." Almost its whole strength rests on a single verse, of very questionable meaning. Of this passage (the verse just quoted) Dr. Cheever said: "It is the citadel of our argument, commanding and sweeping the whole subject."

Now this verse, upon which such momentous powers are rested, may, all scholars allow, be equally well translated "by man *will* his blood be shed," making it merely a prophecy, as "by man *shall* his blood be shed," making it a command. So that, as THE NORTH AMERICAN REVIEW thirty years ago suggested, this tremendous power claimed rests, not only on a single verse, but on a single word, and that word equivocal in its meaning.

Again, our translation says, "by man shall his blood be shed." But "no version of the Bible prior to the fifth century contains the words 'by man,' and Scripture itself has been interpolated to suit the purposes of the state." (*Eclectic Review*," July, 1849.) The Septuagint and the Samaritan versions omit these words; Wycliffe also, and the Vulgate; Spanish, Italian, and French versions omit them. Pascal and Swedenborg indorse the omission, and Calvin calls the translation which renders the Hebrew text "by man," a "forced" construction.

If these authorities are relied upon, the verse will read: "Whoso sheddeth man's blood, his blood will (or shall) be shed," and the idea of a command becomes more uncertain and shadowy still, since "shall" in such connection is not necessarily a command. For instance: "All they that take the sword shall perish with the sword." Is this a command to kill all soldiers? "Bloody and deceitful men shall not live out half their days." Are such bidden to kill themselves? "Whoso diggeth a pit shall fall therein." Is this a command?

Call this equivocal verse in Genesis a warrant from the Almighty! Why, a county sheriff would not arrest a sheep-thief on so ambiguous a warrant.

Second. But the contemporaneous understanding of a law is

of the highest authority. Now, if this verse be a command, that every murderer shall die, it is remarkable that neither did he who gave it conform to it, nor did any of his creatures obey it, in the most striking instances of murder that have taken place. Cain was a murderer at the time when the idea of a murderer at large and unrestrained, in a world with very few inhabitants, must have been fearful. Yet God allowed him to live. Lamech, also a murderer before the flood, was spared. After the flood, Moses, a murderer was admitted to the immediate presence of the Highest, and David, the most atrocious of murderers, was still the "sweet psalmist of Israel," dying in "a good old age, full of days, riches, and honor." Indeed, all the great murderers in Jewish history—Absalom, Simeon, Levi, and the rest—did not have their "blood shed" but died in battle or in their beds.

Third. The most ardent advocate of capital punishment, as said to be ordered by this covenant with Noah, does not, and never would, undertake to obey it. No civilized government, would obey it, or ever did. For if this be a law of God, binding on all men, in all ages and in all circumstances, then it admits of no change and no exceptions.

This command, if it be one, was given before governments existed—given then to individuals. The nearest of kin—"the avenger of blood," as the Old Testament phrases it—was to execute this sentence of death—as he usually did in ancient times, and especially under the Jewish law, where Moses recognized his right to do so. It is, then, the duty now of the nearest of kin to avenge the killing, without waiting for the action of any government, which can never release an individual from obeying a command of God issued to him. We are not allowed to substitute another in our place to carry out an order which the divine law issues to us. Nothing can excuse us from personal obedience. And especially if government acquits the man whom the nearest of kin considers guilty, which is so often the case, then the "avenger" under this law must act on his own conscience, and do the duty which the government has failed to do. Where can we find any warrant for saying that now, since gov-

ernment exists, the "avenger" is released from a duty which this solemn command of God laid on him? Even Moses, much as he changed old customs, did not take from the "avenger" this right to slay. Hence, what we call "lynch law" becomes a religious duty and a divine ordinance.

Further, we must kill every beast that kills a man; we must, as the Jews now do, kill all animals in such a manner as to avoid eating "blood." Even the apostles, when they released the Gentile world from the heaviest of Jewish burdens, still insisted on their obeying this part of the Noachian covenant, to "eat no blood." Yet Christians have quietly ignored it, and the apostles' indorsement of it also. But the command to shed the blood of the man-killer is no more sacred a part of that covenant than this of "eating no blood." And yet any man who preached the observance of such a nicety to-day would be laughed at.

Any man who kills another by accident, without intention to harm him, must be killed. No matter what be the extenuating circumstances of any killing, no man or government is authorized to pardon, but the strict law must be fulfilled in every case, and in all circumstances; the soldier who kills another in war must die; the insane man who sheds blood, and the man who in self-defense kills his assailant, forfeit their lives, etc., etc.

Do you object and say, "Oh, no; we must construe the command, not as it was construed then, but as the circumstances of our day and our light demand?" Exactly; well, we will meet you on that ground, and cheerfully give the supposed command all the weight in present legislation which we think it ought to have. Do you remind us that Moses allowed one who had shed blood accidentally, or without malice, to flee to a city of refuge—and as long as he staid there the "avenger" could not harm him?

Very true. Moses then felt justified in making exceptions to this command, if it were such; after the lapse of a thousand years, and when change of conditions and established government, and improved civilization allowed it.

Moses set us a good example; and now, after thirty-five hundred more years of growth, and a still more entire change of

condition, and far greater improvement of civilization, and the opening of a new dispensation, which abrogates the "eye for eye, and tooth for tooth," we take example by the great Hebrew reformer, and conform methods to our day and needs, seeking only to keep sacredly to the idea and spirit which underlie the wise and humane records of inspiration.

When any supporter of capital punishment, on the ground of the Noachian covenant, eats no beef except that which is killed according to the present Jewish method; insists on the slaying of every animal that has caused a man's death; and on the killing, by government or the avenger, of every man who has even accidentally killed his fellow, I shall think he really and honestly believes in the argument he uses. I never found any such man. Until I do, I am forced to believe that such disputants deceive themselves, and imagine that they cherish such a faith; but any endeavor to carry it into action would rouse their contempt or their heartiest indignation.

Fourth. The moment we quit the plane of divine command, and come down to the level of human law, the argument assumes an entirely different shape. The first question is, has the police power in any circumstances, or for any reason, the right to take life? We may say, with Beccaria, Fayette, and Franklin: "The power over human life is the sole prerogative of him who gives it. Human laws, therefore, are in rebellion against this prerogative when they transfer it to human hands."

Or even with Blackstone, a much narrower and more timid mind: "Life is the immediate gift of God to man, which neither can he resign, nor can it be taken from him, unless by the command of him who gave it."

But this argument is too large for our narrow limits. Any one interested in it can see the subject exhaustively discussed, and the right denied for the soundest and strongest reasons, in the essays of Franklin, Beccaria, Livingston, Burleigh, Rantoul, and O'Sullivan.

Even those who claim that government does possess the right, have been driven by stress of argument and the most convincing experience to agree with Dr. Cheever, that the death penalty

should be "restricted to murder"—not, as in centuries gone by, be visited on trifling offenses, from a mistaken idea that mere severity of punishment prevented crime. But even if we restrict the punishment of death to murder alone, when we remember our experience that the infliction of the death penalty nourishes the spirit of revenge, demoralizes the community (a fact confessed by the now almost universal custom of private executions), lessens the sacredness of human life, largely prevents the prosecution and, to a great extent, the punishment of crime, it becomes evident that you must prove the death penalty absolutely necessary before government is justified in using it. No amount of expediency will authorize "breaking into the bloody house of life" at the risk of such evil results. The opinion of old Sam. Johnson, that unnecessarily severe punishment "very rarely hinders the commission of crime, but naturally and commonly prevents its detection"; of Chief-Justice Denman, that extreme severity has "operated more as a preventive to prosecutions than as a preventive to crime"; of Whately, that the punishment which a community deems too severe leads the very sufferers by a crime "to promote the escape of the guilty,"—all these testimonies get fresh support from the memorial of the Attorney-general of Massachusetts to the legislature in 1842, when Massachusetts punished only six crimes with death:

In the present state of society it is no longer an abstract question whether capital punishment is right, but whether it is practicable; and there is good reason to believe that the punishment of death for crime would more certainly follow the commission if the legislature should still farther abrogate the penalty of death. As the law now stands, its efficacy is mostly in its threatenings; but the terror of trial is diminishing, and the culprit finds his impunity in the severity which it denounces.

Now, that capital punishment is not absolutely necessary for the protection of society, in almost any epoch of civilization, is proved by the amplest testimony. Egypt, for fifty years during the reign of Sabacon; Rome for two hundred and fifty years; Tuscany for more than twenty-five years; Russia for twenty years of the reign of Elizabeth, and substantially during the reign of her successor, Catherine; Sir James Mackintosh in India for seven years; the state of Rhode Island since 1852; Michigan since 1847; Wisconsin; Maine since 1835; Holland since 1870;

Saxony since 1868; Belgium since 1831; and several other states, prove, by their experience, that life and property are safer with no death penalty threatened or inflicted, than in the neighboring countries which still use the death penalty. The evidence is ample and demonstration perfect; the plea that this fearful penalty is necessary is no longer admissible. Facts annihilate its foundations. And observe that every such experiment has succeeded. The weight of this evidence is not lessened by the necessity of balancing some failures against other successes. All the tracks lead one way. And if not absolutely necessary, the death penalty must be extremely injurious. All experience confirms the universal judgment of those who have studied this subject, and which Rantoul utters when he says, "The strongest safeguard of life is its sanctity; and this sentiment every execution diminishes." Indeed, unless the death penalty can be shown to be absolutely necessary, it has been well said that society, in inflicting it, commits a second murder.

The number of persons sent to execution by the courts, and afterward proved to be innocent, has been counted by hundreds in Great Britain, and must probably be counted by thousands, taking in even only the civilized states. When we add those probably innocent, but never clearly proved so, and thus run up the number to tens of thousands, what fearful power such a fact gives to the protest of Lafayette: "I shall persist in demanding abolition of the punishment of death, until I have the infallibility of human judgment demonstrated to me."

A few such instances, even, in a century are sufficient to counteract the best effects that could be derived from example. There is no spectacle that takes such a hold on the feelings as that of an innocent man suffering an unjust sentence. One such example is remembered when twenty of merited punishment are forgotten, the best passions take part against the laws, and arraign their operation as iniquitous and inhuman. This consideration, alone, then, if there were no others, would be a most powerful argument for the abolition of capital punishment.—Livingston.

The "terror argument"—the idea that any punishment, capital or any other, deters men, in any useful or appreciable degree, from the repetition or imitation of crime—is discredited by the best authorities. In a remarkable correspondence, forty years ago, between Lords Brougham and Lyndhurst, it is assumed,

on the authority of all the police magistrates of Great Britain, that this idea of terror from example is a delusion, and that the expectation of relief from that influence must be abandoned.

Analyzed to its last result, this attachment to the death penalty will be found, in most cases, to be really a feeling of revenge. All close inquirers find it to be so. Livingston records a remarkable confession of it made to himself. Sir H. S. Maine says (in his "Ancient Law"): "There is a time when the attempt to dispense with it (i.e., the death penalty) balks both of the two great instincts which lie at the root of all penal law. Without it the community neither feels that it is sufficiently avenged on the criminal, nor thinks that his punishment is adequate to deter others from imitating him."

When we remember that it has been proved, by the most abundant and trustworthy evidence, that "the greater proportion of crime is the result of poverty and early privations"; that the wisest experts agree that "in by far the greater proportion of offenses crime is hereditary"; that one-half, perhaps two-thirds, of those who take life are flagrant instances of society's gross neglect in educating the souls God commits to its keeping; inherit ungovernable passions and minds just hovering on the borders of insanity, if not wholly insane and irresponsible; that, as Dr. Prichard says, "The difficulties with which administrators of public justice have to contend in distinguishing crimes from the result of insane impulse will never be entirely removed,"—this malignant feeling of revenge toward most criminals becomes ferocious and brutal.

Mr. Clay, the veteran and well-known chaplain of Preston Gaol, denounced as "selfish cowardice this cry for indiscriminate vengeance on all sorts and conditions of criminals—as if the comfort and ease of self-asserting respectability, riding paramount on the surface of society, was altogether to outweigh the rights, temporal and eternal, of the helpless, inarticulate mass below."

Bulwer reminds us that "Society has erected the gallows at the end of the lane, instead of guide posts and direction boards at the beginning."

And Dr. William Ellery Channing says, in the same strain, "When I reflect how much of the responsibility for crime rests on the state, how many of the offenses which are most severely punished are to be traced to neglected education, to early squalid want, to temptations and exposures which society might do much to relieve, I feel that a spirit of mercy should temper legislation; that we should not sever ourselves so widely from our fallen brethren; that we should recognize in them the countenance and claims of humanity; that we should strive to win them back to God."

It is evident from the tone of the press, from the excitement and bitterness we see everywhere in the community, and from the very language of one of my comrades in this discussion, that the feeling against Guiteau is one of revenge, rather than a cool and dispassionate care for the safety of society.

This pitiable and misbegotten wreck, who is only just within, if indeed he be within, the limits of moral responsibility, and who could not probably be proved the direct cause of the President's death, to the satisfaction of any jury assembled one year or twenty months hence,—if, carried away by hot revenge, the people hang him, it will be a blot on the justice of the American people which, probably within five years men would do anything to erase, and which history will record as one of the most lamentable instances of temporary madness, or as evidence how much of actual barbarism lingers in the bosom of an intelligent and so-called Christian community.

Public. 10: 102-3. May 4, 1907.

Capital Punishment. Abram E. Adelman.

If it can be supposed that a capital crime has ever been committed with full premeditation of consequences, the very fact of its commission is proof that the threatened death penalty is not a deterrent. How foolish, then, to suppose that even this extreme penalty can lessen or prevent such offenses. Instead of deterring crime, it actually incites to crime.

Nothing will ever make life and womanhood secure but a strong popular sense of their sacredness under all circumstances. This is the reason there are no crimes among the Quakers, the Moravians and other non-resistant sects.

But does the state cultivate among the people the idea of the sacredness of life when it kills the criminal? Would it foster respect for womanhood by reverting to the same barbarism?

Manifestly not.

It is well known that wars, by fostering contempt for human life, are invariably followed in countries emerging from them by long series of murders.

When executions were public, children who had witnessed them were often known to torture and kill their pet animals thereafter and even to torture one another. Such executions were always followed by a carnival of crime in which there was usually at least one that resembled the offense that had just been capitally punished. There are many cases proving this fact in criminal annals.

Nothing is stronger to the criminal mind, which is essentially a diseased mind, than the power of suggestion. Doubtless this explains the recorded cases of men confessing to crimes they have never committed. In a famous case in Vermont the confession was to a murder which had never been committed at all, and the man who made it was saved from hanging only by the timely appearance in full bodily vigor of his supposed victim.

The brutalizing effects of public executions on the community came at length to be noticed. For this reason public executions have been abolished in civilized countries, and now the execution of the criminal is in most places strictly private. By this concession the advocates of capital punishment have impliedly abandoned the ground that the spectacle of the criminal's punishment is a deterrent, and have admitted it to be rather an incitement to crime. But the modern news facilities give to private executions all the demoralizing effects of public executions. It is notorious, for instance, that after the execution of the reckless "car-barn bandits" at Chicago, numerous

gangs of young men of the "car-barn-bandit" caliber had to be broken up. Several of their members are now in the penitentiary.

No advocate of capital punishment would to-day defend it on the basis of revenge. The sole defense of it at this day is that it is a deterrent of crime. But the deterrent argument is being knocked away by hard facts, and the advocates of capital punishment find themselves driven back to the primeval theory of bloody revenge. With most of them this is really the instinctive basis of their belief in the gallows, although they usually deny it. But be their arguments and motives what they may, it is a confession of weakness to say that public security demands the death of any member of society.

The above arguments show the inexpediency of the death penalty as a means of protecting the state and its peaceable citizens. To those who believe, however, in abstract right aside from physical force, there may be adduced a further argument.

Society has no right to take human life. The state itself would deny the right to any organization within it, however large, to take the life of its own members in accordance with its own rules. Then how can it be supposed that adding enough other persons to make a state, gives to this greater number that right to kill which a lesser number cannot claim? Mere numbers can never make a wrong thing right.

By the death penalty society violates one of the fundamental natural laws by which it governs the conduct of its individual members, namely, the natural law limiting the right of homicide in self-defense. I may take another's life only when I am attacked by him and in imminent danger of my own through that other's acts. Should he be advancing upon me with a deadly weapon and "murder in his eye," and I have no means of escape, the laws justify my killing him. But whatever the danger, if I overcome my adversary, and let us say, have him lying prostrate at my feet or bound hand and foot—if I then kill him, society does not justify or excuse me. I am in such case guilty of murder. Is it not time, then, to realize that when society has the criminal bound hand and foot, as it were, it violates its own

law of self-defense if it kills him? Could I say to society, if I were charged with murder, "It is true I had my adversary 'down and out,' but I had to kill him, because, if I had not others as maliciously disposed to me as he, would have assailed and killed me"? Of course not. But this is exactly the "baby act" which society pleads when it takes a convict's life.

The killing of a human being in hot blood is deplorable enough. But such an act cannot be compared in barbarity to the deliberate, cold-blooded killing which capital punishment inflicts. It is a barbarity that must surely disappear from the earth before an advancing civilization.

Putnam's Magazine. 13: 225-35. February, 1869.

Gallows in America.

Our foremost plea is the baneful and demoralizing effect upon society of the means resorted to for its protection. We would put an end to capital punishment, for the sake of the law-abiding classes; just as the abolition of slavery was wisely urged *for the benefit of the white man*. Death may be a murderer's desert, but for the sake of the community let us reconsider this usage of inflicting it. Whether "the worst use you can put a man to" is, or is not, "to hang him," the worst use to which society can put itself is the office of the executioner.

Review of Reviews. 21: 608. May, 1900.

Is Capital Punishment Justified? E. B. McGilvary.

The inaugural address of Dr. E. B. McGilvary as Sage Professor of Moral Philosophy at Cornell University, on the subject of "Society and the Individual" is published in the *Philosophical Review* for March. In the course of this address Professor McGilvary discusses the general question of punishment and its justification in human society. Considering the problem from the culprit's point of view, as well as from that of the com-

munity, Professor McGilvary defines punishment as "the calm, cool, relentless expression in outer act of the fuller completer social self against the narrower passionate self which in the act of offense tries to assert its independence. No man feels that he is really punished except when he accepts the punishment as just what he himself in his saner mood would do to his insurrectionary self. If the retaliation is not approved by the offender he calls it affront, indignity, outrage,—anything but punishment.

Why Should the Murderer's Blood be Shed?

"In the extreme case of capital punishment, it seems to be too much of a heartless paradox to say that the execution is for the criminal's own good or in order to make him good. But I think that without the flippancy which expresses itself in the proverb, 'only dead Indians are good Indians,' we can truly and seriously maintain that we kill some persons to make them good. This end, however, is not to be realized after their death, but before it. Apart from any outlook upon a possible future life—a consideration which is not pertinent here—the coming of the murderer to himself in the prospect of the gallows; his recognition of the enormity of his offense, not against an external society, but against the interests of his better self, which, if he had only seen it, included the life and welfare of his victim; the sad but manly avowal that he has put himself by his act into such a position that the only way to save himself, to redeem himself, to re-establish the harmony he has so rudely marred—not a harmony outside himself, but his own harmony in his adjustment to a social environment that enters into the very constitution of his personality—all this result, I say, and nothing short of this result, will justify the shedding of a murderer's blood. The preservation of the external order may necessitate the execution, but necessitation and justification are two very different things. Into this difference, however, we cannot go at present.

"Experience seems to teach us that with man constituted as he now is—and we are not speaking of what Mr. Spencer calls

'the straight man,' 'an ideal social being,' for we know none such, and could not recognize him if we did—experience seems to show that the only way in which the murderer can be brought to himself is by the instrumentality of the death penalty.

"But while all this is true, it is also true that the callousness of a certain class of persons toward the criminal is inhumane. From the time that the sentence of death is passed, some men seem to regard the convict not as a person to be brought to recognize the meaning of his deed and of his execution, but as a dangerous animal kept for slaughter. It is just such an attitude that has led by reaction to the hysterically tender hearted treatment of the criminal. Both extremes should be avoided."

Review of Reviews. 40: 219-20. August, 1909.

Does Capital Punishment Prevent Convictions?

Among the many perspicacious utterances of the late Henry Ward Beecher none was truer than his observation that "while the fear of hanging does not deter men from crime the fear of inflicting death deters many a jury from finding a just verdict and favors the escape of criminals." This is cited by Mr. Maynard Shipley in an article in the *American Law Review* for May-June, in the course of which he presents some figures and opinions which tend to show that the sooner capital punishment is abolished altogether the sooner justice will come into her own.

With regard to the states which still retain capital punishment, Mr. Shipley cites the opinions of a number of prominent men, all in favor of the abolition of the death penalty. Of these we summarize a few:

Massachusetts.—Representative Thomas L. Davis, speaking for abolition, said: "A jury drawn on a murder trial is often so awed by the responsibility placed upon them that rather than render a verdict that will take the man's life, for fear there is a faint possibility that he is innocent, although they know that he isn't, will disagree or bring in a verdict of not guilty." Mr. William Lloyd Garrison said: "This horror of inflicting the death penalty makes juries violate their oaths." Of 104 persons indicted for murder in 1901-7, six only were convicted of murder in the first degree.

New York.—The late Edmund Clarence Stedman in 1869 said that "there was among jurymen and justices so strong a repugnance to taking human life that it had become doubly difficult to convict a prisoner on the charge of murder."

Connecticut.—Prof. William B. Bailey, of Yale, wrote: "Courts of law are fallible, and the consciousness of this fallibility is ever present in the minds of the juries. There are many cases in which a jury is unwilling to convict when death is to ensue when they might be more willing to sentence a man to life imprisonment."

Labor unions generally oppose the death penalty. Mr. John J. Fitzpatrick, president of the Chicago Federation of Labor, when a candidate for the office of sheriff, said: "Organized labor everywhere stands for the abolition of capital punishment, and if I am elected sheriff I will do my best to further this civilized reform. I never have taken human life and do not intend to, even if my act would be sanctioned by law." A member of the Stationary Engineers' Union was expelled "because he proposed that the number of capital crimes be increased."

There are perhaps some who agree with Prof. John Dewey, of the Chicago University, that there may be circumstances under which the death penalty is necessary; but even he admits that "where the moral opinion of the community is highly developed and where scientific penology has made considerable progress it is likely to be more harmful than helpful." Prof. S. F. Emerson points out another factor tending to make capital punishment impracticable, and, indirectly, leading to illogical verdicts: "Failure to convict for murder is largely the result of the feeling that society is measurably responsible for crime."

Westminster Review. 143: 561-66. May, 1895.

Ought Capital Punishment to be Abolished? G. Rayleigh Vicars.

In this paper, we intend bringing forward the arguments in favour of the retention of capital punishment, as well as those against the extreme penalty. We must first take a rapid view of the practice of other nations in this matter. For my details, I am indebted to Mr. William Tallack, of the Howard Association, London, who has drawn up some useful papers on the subject.

ENGLAND

1880.....	13	persons were executed out of	28	convictions
1881.....	11	" " " " " "	23	"
1882.....	12	" " " " " "	22	"
1883.....	13	" " " " " "	23	"
1884.....	15	" " " " " "	38	"
1885.....	12	" " " " " "	25	"
1886.....	19	" " " " " "	35	"
1887.....	21	" " " " " "	35	"
1888.....	22	" " " " " "	36	"
1889.....	11	" " " " " "	20	"
1890.....	15	" " " " " "	24	"
1891.....	12	" " " " " "	19	"
1892.....	18	" " " " " "	22	"

This table will give a general idea of the number of executions in our country. We now pass on to the practice of other civilised nations.

France.—Taking an average year, viz., 1887, 270 convictions of murder were recorded, of which 240 had verdicts of "extenuating circumstances," 28 were condemned to death, and six executed.

Russia.—No death penalty for ordinary murder, but employed for treason and resistance to government.

Finland.—Executions unknown since 1826.

Germany and Austria.—In Austria about four per cent are executed out of total convictions.

In Germany, out of 231 capital sentences in four recent years, less than 8 per cent were executed.

Sweden, Norway, and Denmark.—About one execution in every twenty death sentences.

Switzerland.—In some Cantons, there have been no executions for fifty years. Capital punishment was abolished in all Switzerland in 1874, but restored in 1879, since which date no executions have occurred.

India.—Capital punishment exists.

Holland.—Capital punishment has been abolished since 1860.

Belgium.—There have been no executions since 1863.

Italy.—Death penalty abolished in 1889.

Portugal.—Death penalty abolished in 1867.

United States.—There are four states in which there is no capital punishment. Tynelings mostly occur in states where the death penalty exists.

So much, then, for the practice of various civilised nations. We have now to discuss the arguments *for* and *against* the death penalty.

Arguments in favour of capital punishment :

- (1) It is the most dreaded punishment, and feared by all.
- (2) It rids society of criminal pests and dangerous savages.
- (3) It is certain in its action, and cannot fail.
- (4) It terrorises the masses into submission to law.
- (5) It has been in use for many centuries all over the world.
- (6) It saves the community all cost of keeping criminals for many years.

(7) It was of common occurrence in the "good old times," and was witnessed by large crowds, thus teaching the long and strong arm of the law.

(8) Under its influence crime has diminished.

The above arguments will suffice, as being fairly representative, and it remains for us to severally answer them, thus formulating our reasons for the rejection of the death penalty.

(1) It is the most dreaded punishment, many meet by all.—From observation of the criminal's last fee murder, but sitate not at denying this statement. At the tim sane because he aonvict, in most cases, remains unmoved. Flumber of suicides in con- there may be a certain amon. Temporary insanity are returned, Home Secretary seems. tclusion that a man may be insane at the age criminal rests. g a murder, and the act of attempted suicide the fatal morproves his sanity, else our coroners' juries must be comes the ror. Given then, the difficulties attendant upon an occur, and estimate of mental responsibility in murder cases, our ing fact clear to the assertion that (the death penalty is too certain that the evocable, too much dependent upon human judgment, be culprit so experienced, for practical application in a civilised com- operaty.)

jur' (4) It terrorises the masses into submission to law.—We fail to see any serious argument here at all. As a matter of fact, at a time when the masses were especially troublesome, when riots were of common occurrence, executions were prolific in number and in public places, so that all might behold the maj-

esty of the law. In the "good old times" men and women were hanged for many offences now deemed worthy of six months' hard labour, yet the hanging went on its way, unmolested by the state and in high favour with the law, as each week saw the carts bearing their motley loads to execution. Many a highwayman was hung in a drunken condition, a glorious spectacle of legal triumph and penal morality, not to say decency, yet the roads continued to be infested with these pests.

(5) It has been in use for many centuries all over the world.—This scarcely constitutes a sound argument for the continuation of any custom. As a matter of fact, the death penalty is not now in vogue all over the world.

(6) It saves the community all cost of keeping criminals for many years.—There is a certain amount of rude truth in this assertion, but it is scarcely one of humanity. It must be remembered that convicts certainly earn many pounds yearly, though their actual cost exceeds their profits. That this should be is not surprising, bearing in mind the fact that a great number of the sentences do not exceed five years, and many are but three years in length. Now it is impossible, owing to the constantly changing nature of the prison population, to ensure prolonged work to any extent, for, when a prisoner is really useful, he goes out on ticket of leave. With life sentences the cases would be very different. Such handicrafts as watchmaking, advanced printing and lithographing would be well taught, and in a few years after admission the prisoners would become experts, and their earnings would probably exceed their cost of living. Some relaxation of prevalent discipline would be desirable, so that encouragement may be given to persevere. Whether this project ever attains maturity or no, one fact is certainly true, and it is that convicts can print and lithograph very well. At Wormwood Scrubbs prison, near London, a great deal of this kind of work was efficiently done some years ago. There can be no doubt whatever but that men under a life sentence could be placed in a position to earn the cost of their keep and a good margin over in addition.

(7) It was of common occurrence in the "good old times," and was witnessed by large crowds, thus teaching the long and

strong arm of the law.—We have already dealt with this axiom under another heading (No. 4).

(8) Under its influence crime has diminished.—There is no accurate foundation for this statement. A few years ago the wave of crime somewhat diminished in force, but of late a fresh wave has burst upon England, which still continues, especially in large cities such as Liverpool. From communities in which capital punishment has been swept away reaches us the prevailing opinion, viz., that murder has in no way increased under the new system. We have not space to particularise further, but we recommend all inquirers to read the sheets published by the Howard Association, and obtainable from Mr. Tallack (at the offices of the Association, 5 Bishopsgate Street Without, E. C.), the Secretary, whose work we believe them to be.

Now, let us summarise our conclusions briefly, and add a few suggestions.

(a) The chief objection to capital punishment lies in the irrevocability of the same. A man or woman can be recalled from prison, but not from a felon's grave.

(b) It is always difficult to accurately gauge the mental or moral responsibility of a murderer, especially in those very numerous cases where the motives of crime are jealousy, a condition of morbid brooding over injuries, and unfounded suspicions. Many criminals assert that they heard voices directing them to commit murder. Who can say whether this be true or assumed?

[A life sentence in all cases of wilful murder would enable the prison medical officers to watch these men, and their future liberty would depend very much upon the medical observation and subsequent reports. If malingerers, then there is the convict cell, if insane, then there is a special ward ready; or Broadmoor can be made use of. The obstacles in the way of determining the actual mental condition of many murderers at the time of crime, renders hanging a very dangerous and unjust method of punishment, and is a major objection to the same.

(c) We would advocate the abolition of capital punishment and as a substitute make use of brick walls and strong cells, and in these the convict would spend the greater part, if not the whole,

of his life, engaged in profitable occupation. Verdicts of murder might be classified under two heads, as first and second degrees of guilt. For the former the sentence would be an unconditional detention for life; for the latter, detention from twenty to thirty years, the present system of marks being abolished, and ticket-of-leave done away with. A special prison would be required, built upon the lines of the most improved American system, and into this would be received all those, male and female, who had been convicted of wilful murder. In case of protracted misconduct, the prisoner would be removed for a period of three years to an ordinary convict prison, there to undergo the usual rigorous discipline now in force. Or, during the first three years of the sentence, all convicts might be sent primarily to penal servitude, and then the removal to a special establishment would follow, always providing that the conduct has been good during the three years of probation. This proviso would ensure satisfactory discipline in the special prison, without being unduly harsh, bearing in mind the indefinite duration of the sentence. A spirit of eclecticism could do much in the choice of prison system, and a committee of visitors to the American goals would be a step in the right direction, by which the actual selection might be made.

Westminster Review. 155:144-9. February, 1901.

Capital Punishment: Ineffectual and Mischievous.

T. M. Hopkins.

Reciprocity in murder is certainly, if calmly considered, an odd policy; it does violence to the old and true maxim that two wrongs do not make one right.

Westminster Review. 168:178-86. August, 1907.

Emotion as a Law-Maker: a Sociological Suggestion.

G. M. Hort.

Revenge of a kind has left its stamp on the penalty we impose on murder;—not so much the revenge of private feud,

as a sort of a social blood-thirstiness; an animus felt by the whole community against the individual who had violated its peace. None will deny that this emotion in the beginning was a natural and lawful one; that it even, in the breasts of the men who felt it, indicated a moral advance. But it is to be regretted that this natural feeling was allowed too hastily to cool and crystallise into a dogma, and that our death penalty should now by consequence, despite great outward dignity and moral symbolism, retain the impress of a more savage age than ours.

Strangely enough, though much mild sentiment has been expended from time to time in the cause of the criminal, the cause of him whom the criminal has rendered necessary has scarcely found an advocate!

Yet the hangman's case is, to the clear-sighted, actually the more pitiable of the two. He must be a very high-minded man, indeed, if he does not morally suffer by the lack of moral support and the sense of degradation under which he labours. Nor are these things of the senses only. There is much in his office which is degrading in itself.

It is indeed surprising that so far-seeing and prudent a folk as the English usually are, should have tolerated so long among them the rearing of a series of individuals, habituated to taking human life in cold blood, to taking it from unresisting persons, and, above all, to taking it without any saving sentiment of duty which, shed upon its sordid details, might enlighten all.

Whatever may be said for the character of the paid hangman in his private capacity, it cannot be said that he is, as a rule, drawn from a class distinguished for its refinement or high moral sensibility. What is more likely than that he will be brutalised by his trade, that he will set a lighter and lighter value on human life, and transmit to his descendants those blunted capacities for feeling, which in later generations might easily develop into an inhuman cruelty! We can ill afford, it would seem, to perpetuate, as of set purpose, a degraded strain in a race already heavily handicapped by countless accidents!

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If a professional executioner is to be retained at all, he should be elected from a class which would prove itself most fit, by being the most soberly reluctant. He should be chosen from individuals, who deeply endowed with feeling, would yet be ready to set feeling aside, and sink it in a deeper sense of awful obligation. He should be a man whose thoughts could never degrade himself, and whose speech could never degrade others. In a word, he should be a man of so high an order of mind, as to be able to elevate his task, instead of sinking to its level.

If the law indeed, as the thirty-seventh Article maintains, has power "to punish Christian men with death," and if it be found necessary as of old to the "King's Peace" that it should always continue to exert this power, it would be well to find some method whereby that punishment should not involve the demoralisation of a number of other "Christian men!" Popular agitation resulted in the end of public executions on those very grounds—that of demoralisation; and on the same grounds it might avail to abolish the hangman too.

Westminster Review. 169: 333-41. March, 1908.

Homicidal Crime and the Death Penalty Abroad. Carl Heath.

Writing in the December number of the *Nineteenth Century and After*, Sir Arthur Wills, late Justice of the High Court, makes the somewhat notable confession of opinion that—"The greater the uncertainty of punishment, the less its deterrent effect. Could certainty be secured a small penalty would have much more effect than a greater punishment combined with uncertainty." I say notable, as coming from a judge, and one who, strangely enough, is not prepared to support a demand for the abolition of that greatest and most uncertain of penalties—the penalty of death.

The latest judicial statistics obtainable for England and Wales, viz., those published in March, 1907, and which take

us up to the corresponding month in 1905, give the following for the previous twelve months:—

Number of homicides known to the police287

(Murders 137, manslaughters 150.)

Number of convictions and death sentences for murder 32

Number of convictions for manslaughter 72

Number of executions for murder 17

To say the least these figures are arresting, for they show that under our present system the chances of a murderer escaping conviction are three to one, and the chances of escaping the only admitted penalty according to the law are exactly seven to one.

And this is the more curious and significant because the most common of all pleas for the retention of capital punishment is the plea of its deterrent character. Very many otherwise humane people, people who, by the way, would never be able to bring themselves to the point of personally assisting at the execution of a fellow creature, and who are otherwise very willing to help in humanising the criminal law, do, notwithstanding, seriously believe that this penalty is a "regrettable necessity," and that were it to be abolished, a serious outbreak of crimes of murder would immediately take place. They believe, as so many have believed, that a terrible punishment *must* deter. This idea of the inherently deterrent nature of violent punishment is always coming to the fore. Thus, to mention a classic example, the Whig government of Earl Grey in 1832 could conceive of no better way of meeting a rather large number of murders than the re-introduction of the ghastly business of gibbetting. Fortunately for the credit of English humanity, the violent rioting amongst the brutal mobs that assembled for the shows of Leicester and Jarrow led to the abandonment of the idea.

The truth is that one single fact vitiates the whole argument for terrible punishment, and it is this—the more terrible a punishment the more impossible it becomes in modern days of civilisation, science, and humane ideas, to carry it out inflexibly, without hesitation, and without innumerable excep-

tions. Every step, therefore, in this direction, makes the certainty of the punishment grow less and less. And as its certainty vanishes, its deterrent character vanishes also. Now this is precisely the case with the death penalty. Hanging for murder might be a plausible method of punishment from the deterrent point of view, if we always or almost always hanged the murderer. But we do not and cannot. We hang one in eight, and that one very often with protests from large numbers of people. The penalty has ceased to justify its existence then from this point of view, ceasing to be an effective deterrent.

But even if we still hanged, as in the *good old days*, why, it may be asked, should we suppose that it would deter the murderer. In the debate of 1877 the late Sir William Harcourt very truly said:—"If the punishment of death did not prevent men from stealing horses, why was it more likely to prevent them from committing murder? Murder was generally committed under the influence of violent passion; and if it was found that the punishment of death did not deter in the case of crimes which were committed in cold blood, was it possible, was it reasonable, to suppose that it would act as a greater deterrent in the case of murder?"

However, the Englishman is proverbially *not* a student of history, else he might be struck in this connection by the fatuous opposition offered in the past to the abolition of capital punishment for other crimes, such as forgery, stealing, and sacrilege—all capital crimes eighty years ago. Said Lord Ellenborough in the House of Lords in 1833, speaking against the proposal to abolish hanging for stealing:—"Your lordships will pause before you assent to a measure pregnant with danger to the security of property. The learned judges are unanimously agreed that the expediency of justice and the public security require there should not be a remission of capital punishment in this part of the criminal law. My Lords, if we suffer this bill to pass we shall not know where we stand; we shall not know whether we are on our heads or on our feet."

The pro-hanging portion of the community might, perhaps, with some force, say: "It is contended that we are wrong in

supposing that the abolition of capital punishment for murder would result in an increase of homicidal crime. But one opinion is as valuable as another, and we cannot afford to risk the experiment." I say with some truth only, for this position would be tenable if the experiment had never been made. I propose to show how, in other civilised countries, more particularly those allied to us by blood, by religious, social, and political ideas, it has been made, and with marked success.

The nearest country of which this is true is Holland. The Dutch are not sentimentalists, and their laws and customs are based on similar sanctions to our own. And their political outlook, their religious ideas, and their social organisation, make their experience a valuable one.

Capital punishment was abolished in the Netherlands in 1870. The Consul-General for Holland, replying last July to a question addressed to him by the Council of the Society for the Abolition of Capital Punishment, gave the following figures for ten years:—

NUMBER OF PERSONS CONVICTED OF MURDER

1894	12	1899	8
1895	9	1900	5
1896	9	1901	5
1897	8	1902	3
1898	6	1903	5

These figures do not bear out the theory of an increase in murder crimes following abolition. On the contrary, taking into consideration the increase in population, they emphatically point the other way. They also bear witness to the truth of a remark made by a recent writer in the *Nation* to the effect that—"at bottom, the criminal problem is not so much a penal as a social problem." Fundamentally, it is not punishment that lessens crime of any kind, but improved conditions.

The average of murder cases, according to the Dutch Minister of Justice, from 1849 to 1869 was one in 325,000 of the population. From 1869 to 1888, it was one in 346,000. In 1878 there were 14 cases; in 1888, 12 cases; in 1898, 6 cases.

The same kind of evidence comes from Belgium. In Belgium, capital punishment has not been abolished *de jure*, but no execution has been carried out since 1863. The Minister of Justice stated in 1890, that during the decade 1846-1855, when executions were carried out, there were 143 capital sentences. In the decade 1876-1885, when executions were *not* carried out, there were 87 capital sentences. In other words, with no executions the number of murder cases had decreased by nearly 40 per cent.

As regards the Northern states the following letters of last October and November are of interest:—

From the Consul-General for Norway:—"I beg to inform you that by the General Civil Criminal Law of the 22nd May, 1902, capital punishment was abolished in Norway. No death penalty has, however, taken place in Norway since the seventies. The last execution was performed in Bergen in 1875."

From the Consul-General for Sweden:—"I beg to say that capital punishment is not abolished in Sweden, but in later years executions have only been carried out in exceptionally grave instances. As far as is known this growing clemency on behalf of the state cannot be said to have provoked any increasing criminality in the country."

From the Consul-General for Denmark:—"I beg to say that the death penalty is still maintained in Denmark. No capital punishments have, however, taken place for the last ten years, as the King always uses his right to reprieve the condemned persons."

I cannot pretend to offer statistical results of the humanising tendency in the Scandinavian states, but it is at least obvious that it has not led to an increase of murder crimes; otherwise we may be sure that the capital sentence which still is passed in Sweden and Denmark, would not have been systematically abjured during the last decade, by the authorities concerned.

When we turn to Switzerland we obtain even more valuable evidence. In 1874 the Federal Parliament abolished the death penalty throughout the Republic. Many people, however, were not prepared for such a measure, and an outcry occurred

in some of the Cantons. As a consequence, permission was given in 1879 to the Cantons to individually restore the death penalty, and eight Cantons re-established it. The Society for the Abolition of Capital Punishment applied last June to the British Legation at Berne for information as to the number of executions in these Cantons since the re-introduction of capital punishment. The following reply from the Legation, dated July 4th, 1907, is instructive: "I beg leave to inform you that from enquiry made at the Federal Department of Justice and Police, there have been no executions in Switzerland since 1879." This result cannot be due to Swiss sentiment for the death penalty was expressly re-introduced on the ground that it was a necessity—murders would increase, etc. The result, in fact, is due to experience—murders have *not* increased with a more humane execution of the law. As has been remarked, not even a defender of hanging feels less safe in Geneva than in Glasgow or Manchester.

In Portugal capital punishment was abolished in 1867. Homicides are officially stated to have materially decreased since abolition, previous to which they were never less than 140 per annum, and they had been as high as 220. In 1880 they were just half of the latter number—viz., 110.

The case of Italy is somewhat difficult to deal with. Murders, or rather "assassinations," are, and always have been, extremely numerous, and even so well informed a paper as *The Lancet*, attributes this fact to the abolition of the death penalty by the New Code of 1889. But that the death penalty has little or nothing to do with these assassinations, and that an explanation of them must be sought in factors, racial, social, and climatic, is shown by the fact that although capital punishment has been abolished in Tuscany for a century, and although murders are frequent there, the number in proportion to the population is about one-tenth of those occurring in Sicily (*vide* Howard Association Inquiry, 1890).

The Lancet, indeed, gives us the real explanation of these murders. They are largely due, we are told, to "the use of the stiletto, or knife, carried (illegally) by every Italian, and

the consequent infliction of blows not intended to be lethal, but often having that issue. Youths of either sex, for example, in a fit of jealousy or vicious excitement, will whip out a knife, and before they are aware of what they have done, will have killed the object of their momentary resentment." It seems obvious that this kind of crime will never be stamped out by any kind of penalty, but needs a remedy of a more radical kind, touching the cause and not the effect.

When we turn to France, where the executioner's salary has been suspended, and where the President refuses to sign death warrants, we are met with the cry that crime has enormously increased of late years, and there is probably some truth in this assertion. The real weakness in France is not the lack of capital punishment, as many of the papers tell us, and as large numbers of French jurors appear to think, but a lack of the sure administration of the law. As that venerable reformer, Frederic Passy, states: "It is the certitude of non-capital punishment, not the terrors of a death penalty, which there are so many chances of escaping, that influences the mind of a criminal." It is not violence but uncertainty that breeds contempt in the minds of those who might possibly be deterred by fear of the law. The French apache or other murderous ruffian has no ground at present for believing that the law, whatever it be, will be carried out. And as regards capital punishment, it cannot be too often emphasized that it can only be an effective deterrent when rigorously enforced, and that that is just what is impossible under modern civilised conditions. Under present conditions, even when the penalty is enforced, say in the case of a cold-blooded murder, the likelihood that it will *not* be, which in England is as seven chances to one, and in France has been greater, neutralises all deterrent influence. The French experiment in abolition, it must be remembered, is but a short one of some two years. The following, which I quote from the *International Journal of Ethics*, of April, 1907, illustrates my point:—

"A double execution took place last August twelvemonth at Dunkirk, of two Belgians named Van der Bogaert and Swar-

tewagher. These two ruffians had committed robbery and murder; deliberate murder, that is, for the purpose of a burglary. There was no passion or hatred of an individual in their crime. If the fear of the death penalty had any effect, why did they not transfer the execution of their plot some few kilometers to the east, over the Belgian border, where their necks would have been safe."

Well might the *Petit Bleu* call this a "saisissante preuve de l'inefficacité de la peine de mort."

What will be the immediate solution of the question of the death penalty in France it is difficult to say, but while one leading review declares that—"It is no use legislating on this matter in advance of public opinion, and while French juries all over the country demand a return to the guillotine, there is, on the other hand, no reason to suppose that what has been the case in Switzerland, Belgium, and Portugal, will not be the case in France, and that when the death penalty finally disappears, the public will accommodate itself to the moral level of the law."

America offers the best possible field for the formation of English opinion on this question, for not only are many of the states to a very large extent English in character, religion, social customs, law, and language, but the forty-five states, with their forty-five criminal codes, offer a wide and useful field for comparison. Capital punishment has, as yet, been abolished in five states only, viz., Maine, Wisconsin, Kansas, Michigan, and Rhode Island. On the other hand two states, Virginia and Missouri, have the unenviable notoriety of eight capital crimes each. Between these there is every possible variety. Louisiana has seven capital crimes, Delaware six, five others have 4, three have 3, nine have 2, and nineteen have one capital crime each. Amongst the crimes which are capital in many states are murder, treason, rape, kidnapping, and train-robbing. Thus rape is capital in sixteen states, treason in ten, and kidnapping in three.

Now, it is quite arguable that the peculiar conditions prevailing in some of the Southern states make the maintenance

of the death penalty necessary. As an Englishman I am not presumptuous enough to deny this offhand. I would remark, however, that these are not the states from which one would draw inferences applicable to the British Isles. The Northern states, including those which have done with the hangman, are much nearer to England in point of conditions. But I may draw attention to the remarkable report drawn up by Mr. Thos. Speed Mosby, the Pardon Attorney to the Governor of Missouri. Mr. Mosby addressed the Attorney-General of each state by circular letter requesting certain information with regard to the death penalty. He tells us that the Attorney-Generals of the five states in which capital punishment has been abolished, all report that—"There has been no increase in capital crime since abolition." I should here state that the dates of abolition are the following: Michigan 1847, Rhode Island 1852, Wisconsin 1853, Maine 1887, Kansas 1907. In the last-mentioned state there has never been a legal execution, but the death penalty was only formally abolished last year. Maine first abolished the death penalty in 1876. In 1883, it was re-enacted for the crime of murder alone. In 1885, the governor, in his message, remarked that there had been: "An unusual number of cold-blooded murders within the state during the two years past," and that "the change in the law relating to murder had not afforded the protection anticipated." In 1887, Maine finally got rid of its hangman. It will be seen that there has now been some time for observation of results. It may, perhaps, be argued that these are all Northern and Eastern states, but Mr. Mosby draws some suggestive comparisons. Thus—"Illinois, with her large negro population, suffers no more from rape than does Missouri, yet in Missouri it is capital, in Illinois not." "Death is the penalty for murder in all Kentucky, yet in some parts of that state murder of family foes is a matter of family pride." "Murder is capital in Colorado, but murder is more common there than in Kansas, which has no capital punishment."

On the whole it may be said that the tendency in America is very generally towards the humanising of the criminal law, the introduction of reformatory and curative methods replac-

ing the old punitive ones, and that with the advance of these methods the death penalty will naturally disappear, either by direct abolition or by the introduction of gradation of murder crimes, when the capital penalty will die out by gradual disuse.

Thus Mr. Mosby, writing some months later with regard to Missouri, says: "This state has recently enacted a law leaving it optional with trial juries as to whether the death penalty shall be imposed for murder in the first degree. It is thought that this law will greatly reduce the number of executions, for most juries among us are exceedingly averse to the infliction of the death penalty. The new law gives the jury the option of imposing a life sentence in the place of capital punishment, and it is expected that life imprisonment will be the result of murder convictions hereafter in this state." The same holds good of at least sixteen other states, including Massachusetts and New York, and there is no doubt but this is the tendency in the development of the criminal law throughout the United States.

Enough, however, has been said, I think, to prove the truth of the contention that the experience of other countries, and more particularly of Holland and the Northern Countries, and of certain of the states of the American union, goes to show that the time has now come when the death penalty—a penalty in direct opposition to all the tendencies and methods of modern penology,—not only should be abolished, on humane and ethical grounds, but that with perfect practical safety might be so. That, indeed, so far from any disastrous results following, an increased respect for human life shown by the state in its legal expression would lead to an increased respect for human life in its component parts, the men and women of whom the state is composed.

One other point may here be dealt with, though it does not directly form a part of my thesis. The English humanitarian societies, including the Society for the Abolition of Capital Punishment, have adopted the policy of graduation of murder crimes first, abolition of the death penalty second. Even those who are not convinced of the practical possibility of abolishing the hangman at present, must admit that it is a monstrous thing that

forty-one years after the strong recommendation of the last Royal Commission on Capital Punishment of 1864-6, we should have made no progress whatever in the matter of gradation—that judge and jury must still choose between guilty and death or not guilty, and freedom in *every* case of technical murder from the most cold-blooded and mercenary crimes to crimes of passion and misery. It is a ghastly mockery that capital trials should still take place in cases of infanticide, that the judge should still be compelled to pass sentence of death upon some unfortunate girl, who, may be, has been in several cases lately, about to give birth to another child. Such a sentence must desolate every humane and decent-minded judge, and is a vile and standing disgrace to our criminal code. Compare, then, the code of this country with that of our ally, the non-Christian, but advancing Japan. Count Mutsu, of the Japanese Embassy, replying to the Council of the Society for the Abolition of Capital Punishment, states: "Under the revised criminal code of Japan murder is punishable by penalty of death, or by penal servitude for life, or for not less than three years, according to the circumstances of the case."

If, then, my countrymen still cling to their hangman, "one of the bulwarks of the British constitution," as it has been said, is it not at least time that his post should be reduced in importance to that which it occupies in the land of the Rising Sun? Surely we can, at least, afford to be as just, as intelligent, and as humane as the Asiatic Japanese.

Westminster Review. 170: 91-8. July, 1908.

Shall We Abolish the Death Penalty? Advocate C. J. Ingram.

A Reply to Mr. Carl Heath.

In a recent article in the *Westminster Review* the case for the abolition of capital punishment was advocated with such vigour and such a wealth of statistics that its conclusion at first sight appeared irrefragable. But if it is admissible to attempt

to solve a problem involving such abstract questions as those raised by penalism by recourse to concrete figures, it is well to look also at the other side of the medal.

An enquiry into the efficacy of capital punishment not only involves the question of the deterrence of homicide, but necessarily includes the consideration of other phases of crime.

Now at the outset we have this objection to the position taken up by Mr. Heath.

In limiting his article almost entirely to the deterrent effects of capital punishment, he has omitted not only the preventive results, but also has made no investigation into the real reasons for which we punish with death.

Reverting to the history of penalism, the subject falls naturally into three periods.

X The original theory of punishment was vindictive pure and simple; the "*lex talionis*," the eye for an eye and the tooth for a tooth, held undisputed sway as the measure of justice up to the end of the eighteenth century. And as between his victim and the wrong-doer a great deal may be said for it. For if the instinct of justice is innate in mankind, is it not time that the guilty party in his heart of hearts will admit the justice of the penalty? The humanitarian may possibly object to the application of the supreme penalty to *others*, but conceiving the possibility of his being found in such grave circumstances himself, would he object to the *justice* of the punishment that demanded his head?

— If the aim of judgment is to fit the crime, then the death penalty is one of the few cases in which such retribution is possible. Such a phase of justice may be elementary, but it does not necessarily follow that it is incorrect.

During the second period, following on the close of the eighteenth and during the early portion of the nineteenth centuries, the aim of punishment was almost entirely deterrent. Public opinion, shrinking from purely retributive theories, had not so far advanced as to imbibe reformatory ideas. The law set itself to intimidate others, not to correct the malefactor himself. Under this theory it was held necessary to retain the

capital penalty for homicide, though its use was abrogated in the case of less serious crime. (Now it is to this conception of capital punishment, namely in its action as a deterrent, that exception is taken almost entirely by the humanitarian school, and against its validity as such their attack is confined.) Omitting then for the moment its preventive and other indirect effects, it will be necessary to follow Mr. Heath's investigation of capital punishment as a deterrent pure and simple.

Does the death penalty deter? At the outset one must combat, at any rate as far as England is concerned, the assertion that the very small percentage of executions actually carried out diminishes the effect of the capital sentence on the mind of the public. As matters stand, the man in the street does not read statistics, and though he is aware that homicides attended by mitigating circumstances do not meet with the supreme penalty, yet in his mind the crime of murder and the hangman's rope are indissolubly connected.

Whilst dealing with direct deterrence the comment is frequently made, how can the existence of capital punishment prevent the commission of homicide undertaken under extreme circumstances of passion, emotion, or revenge? In answering this question we must notice the underlying fallacy. Crimes committed under circumstances of great excitement, sudden passion, or provocation do not generally call for the extreme penalty, for technically they do not amount to murder.

Practically only three classes of homicide are attended with the death penalty. First, where the deliberate intention to kill is manifest or may be presumed from the circumstances of the case; for instance, where poison or some other similar deadly means are employed; secondly, where the killing is preceded by or accompanied with some other very serious crime, such as rape, burglary, or robbery. The third class comprises those cases which declare a reckless disregard of human life.

Instances of this are baby-farming, where the culprit commits murder for a paltry gain, and sexual cases, where a tired husband or lover removes his wife or mistress in a cold-blooded and heartless fashion.

Bomb-throwing and train-wrecking afford other illustrations.

So if a man finds another in the act of adultery with his wife and comes upon him shortly after and kills him, it is extremely improbable that any jury will convict him of murder, but supposing a considerable period of time to ensue and deliberate revenge be substituted for passion, it will be a very different state of affairs.

Therefore, we may say that only three classes of homicide are punished by the death penalty, namely: (1) where deliberation is evinced; (2) homicide accompanied by other serious crime; (3) where there is a reckless disregard of human life. And in such cases the fact that the death penalty will follow is certain and of this certainty the public is aware. It is on these types of crime, therefore, that we must focus our investigation in answering the question as to the effect of the death penalty as a deterrent.

In dealing with such a psychological problem, the value of statistics, as has been premised before, is doubtful; but if statistics are taken as to the effect of severity of punishment on homicide, and of all forms of punishment capital punishment is the most severe, what do we find?

In France crime divides itself into two epochs. From 1828 to 1884 murders rose from 197 to 234 per annum; infanticides from 102 to 194; criminal assaults on children from 136 to 791; on a population showing an increase from 31 millions to 38 millions. Surely such a state of affairs cannot only be attributed to a lack of sound administration, especially when it happens to be coeval with that second period when the theory of short and reformatory punishment, the badge of the humanitarian school, was most in vogue? The second epoch in France dates from 1886, where a small diminution of the most serious crime is apparent, coinciding with a marked increase in the severity of punishment.

In Italy the declension of severity in sentences is in direct relation with the increase of crime between the periods from 1863-1880.

The following table of statistics shows the remarkable rise in the figures, during this period of leniency.

CRIME IN ITALY FROM 1863-80

	1863	1869	1870	1880
Parricides	12	22	34	39
Conjugal crimes, murder by husband of wife or vice versa.....	15	15	38	92
Infanticide	44	52	53	82
Other murders	285	419	450	705

In 1860-1870, increase of crimes punishable by death, 22 per cent.

In 1860-1870, increase of crimes punishable by imprisonment for life, 64 per cent.

From 1881 onwards a tendency of the more serious crime to decrease is noticeable, but in 1890 the death penalty is abolished. Murder statistics show an annual average of 4,000 cases and an increase of crime from 254,591 cases in 1890 to 305,258 in 1899, which works out at an increase of nearly 200 criminals per 100,000 of population.

Taking the third great continental power, Austria, we find an annual increase of crime from 18,154 in 1865 to 27,304 in 1875, and as much as 31,000 in 1898.

So everywhere in the larger continental powers, statistics show a remarkable aggravation of crime. But in Great Britain we find a remarkable contrast. With reference to our criminal statistics the remark of the celebrated Italian theorist Garofalo, in his work on criminology (to whom the writer is indebted for the above figures) are illuminating. "It is only in England," he says, "that crime shows a general tendency to decrease, especially in its gravest forms, looked at over a period of several years. Murder has become exceedingly rare; the number of prisoners has decreased from 20,833 in 1878 to 12,178 in 1893. Convictions for theft and perjury decrease in the same ratio as crimes against the person. But England is precisely the country where modern penal theories have had the least influence, where the death penalty is frequently applied, and where the other punishments are extremely severe."

So much then for criminal statistics. If they show anything, surely the coincidence of the rise and fall of crimes in harmony

with the stringency or the reverse of the "sanction" with which they are menaced is remarkable. If it is legitimate to maintain a logical connection between them, then we may infer that the casuality of capital punishment divides itself into two channels. First, it does directly deter those tempted to commit the actual crime of murder; and, secondly, indirectly its existence permeates through society and diminishes crime.

As to the first of these results, its direct action. Taking the three types of homicide mentioned above as those whose present retribution is capital punishment, surely the perpetrators of such acts are the most amenable to the terms of the penalty. The man who deliberately uses a secret poison does so not because his object is obtained more surely than by the instrumentality of the knife or the bullet, but for the obvious purpose of screening himself from discovery and its overwhelming consequences. This type of criminal is not only a murderer but a coward.

But are we then to eliminate the reason for his cowardice?

Baron Garofalo cites a case which came to his personal observation which supplies a concrete illustration of the direct effect of the capital penalty. A man from his house saw his enemy walking down the street, and in an access of rage seized his rifle and pointed it at his foe. He took aim and was just about to pull the trigger when he was seen to lower his weapon, saying, "the law has re-established the death penalty." As a matter of fact only deliberate murders as distinct from such sudden homicides were punishable by death, but in this case the existence of the death penalty undoubtedly saved a human life.

Turning to our second class of crimes punishable with death, such as robbery, or burglary consummated with murder, cannot the extreme rarity of such cases in England in comparison with other countries be characterised as the direct outcome of the judicious severity of the law? Such crimes are almost invariably committed by the professional criminal, the recidivist. He is aware that if he is caught, his sentence after what is probably repeated conviction, will be a long one, perhaps fifteen years. The conclusion is obvious. The chance of the life sen-

tence, representing 20 years, will not deter the desperado who, unless he kills to avoid capture is doomed to a sentence of practically the same proportions.

As to our third class of homicide, wherein a reckless disregard of human life is manifested, such as bomb-throwing, train-wrecking, or baby-farming, even the "humanitarian" or "reformatory" school should shrink from decreasing the penalty for a crime which most of all evinces a callous disregard for human life. Are we to "educate" such monsters to a sense of pity, whose avarice outweighs life itself in the scales?

Rather let us extirpate them, though the death-penalty has in their case proved no deterrent.

The indirect effects of capital punishment obviously it is a difficult matter to gauge. But that the idea of its existence in the minds of the general public is of substantial value there can be no doubt. At any rate in this respect we may perhaps see the concrete result by a comparison of the general criminal figures of the United Kingdom and the continent as exemplified above. But apart from this, the fact that the state has the supreme power to take away life must surely reinforce the gravity of other penalties in the eyes of malefactors.

The professional criminal knows when plotting a fresh crime that this time it may be a long sentence, but he is also cognisant that beyond this there is yet the most potent weapon of all in the hands of the law.

Still it is subjectively on the criminal and objectively on the public as to the consequences ensuing from its non-existence that the greatest arguments for its existence hinge.

And this brings one to the third and latest theory of penology, of whose tenets in England Sir Robert Hunter and Judge Wills have been the most prominent exponents. The dogma of this school in reality springs from a revulsion from the reformatory ideas at the close of the nineteenth century. Testing the investigations of Lambroso, Ferri, and other theorists of the Italian school, and rejecting their conclusions as to an anthropological criminal type as unsound, the most modern English school have taken up the threads where the reformatory school

had pushed their conclusions no further. Those penologists who designed to solve the question of crime by the reform of the criminal, when they found such a solution impossible, attempted no other settlement. The latest school, going on where the other school left off and accepting the fact of impossibility of reformation, lay down that crime must be grappled with, if not by the education subjectively of the criminal, yet if necessary at his expense and for the benefit of the public. So the logical end of their creed is elimination; the natural evolutionary process by which those unfitted or incapable of adapting themselves to their environment must drop out.

This principle then involves two premises. First, that the criminal is incapable of improvement, and secondly, the welfare of the law-abiding public is not to be sacrificed to the interests of the individual.

With regard to the possibility of reformation, the world-wide results of the vogue of reformatory theory show that acting on the class of the more serious criminals that theory has proved itself a failure.

The "recidivist," that individual criminal type whose increase has so insistently demanded a solution of the problem of crime, has everywhere grown in numbers. In Austria the number of reconverted prisoners to total conviction amounted to 45 per cent. In France the percentage was 46.

Belgium, held up by Mr. Heath as a beneficial example of the abolition of the death penalty, is second in magnitude on the list, her recidivists numbering 49 per cent., topped only by Italy with a percentage of 55 per cent. It is with this flotsam of humanity that measures of reform have to deal and the high percentage which speaks of convictions of the same individual, recurring again and again, gives the measure of their success.

Let us take again another northern population, which Mr. Heath has cited as an example to us in its administration of the highest penalty known to the law, namely Sweden. Only in exceptionally grave cases is the death penalty inflicted, he is informed. But, supposing his advocacy of the leniency displayed in that country to be correct, we must be prepared for the devo-

lution of methods, similar at least to those in vogue there at present, in substitution for what we employ as matters stand. In Sweden criminals convicted and sentenced for life, which it is presumed would include all prisoners who would otherwise have suffered the death penalty, are released after a short period of good conduct on condition that they find a patron, a guarantor of their good conduct, and also subject to the proviso that should they even misconduct themselves again, they will be relegated to penal servitude for ever.

And what are the amazing results? In spite of the inducements to reform and the terrible sanction imposed on subsequent recidivism, 75 per cent. of these so released, do fall again, and return again to gaol. Is this the kind of system even from the point of view of the offender, that the reformatory school would wish us to adopt in lieu of our own?

The fact is that there is mentally a true criminal type, even though the physical type cannot be predicated. Drink and poverty may be the environment in which the bacillus of crime has the most favourable opportunity of hatching out, but just as the theory of evolution is referable to man as to the rest of the animal kingdom, so the correlative theory of atavism must inevitably also apply. Heredity and atavism between them have produced the criminal recidivist, the throw-back in the evolution of mankind.

Granting then that reformation is out of the question, are we not to continue and say that the interests, and even the being of the criminal, are to be sacrificed for the welfare of the public? Surely if the first premise is correct, the second necessarily follows. The only assumption on which the giving of fresh opportunity or mitigation of penalty rests, is that of promise of good conduct or reform in the future. If the fulfilment of such promise is refused or rendered impossible by the criminal, then the interests of his other fellow individuals, the public, are paramount. But the question may be asked: Cannot the interests of the latter be preserved even with the abolition of the death penalty? And herein lies the root of the matter. You cannot abolish the death penalty without also

abolishing the sentence of imprisonment for life. The agitation which owes its origin to a humanitarian shrinking from putting a period to human life, however debased, will inevitably be directed against a substitute of perpetual imprisonment. Such has been the case in Sweden. In England it is well known after a period the "lifer" is released.

In Italy he gets out much sooner even than here. Criminals flourish in that country who have committed as many as three murders. A murderer there has even been known to boast of his immunity from the scaffold.

Again, apart from the danger to the public of a repetition of homicide by the same criminal, the fact of the serious result of his enlargement must not be overlooked. Once again released, the forces of heredity regain their full scope, and the serious consequences can be made plain. Statistics have shown that as many as roughly 25 per cent. of criminals have received the criminal taint in their blood. Garofalo, as an instance, cites the notorious Yuke family which numbered 200 thieves and assassins, 288 idiots, and 90 prostitutes descended from the same source during 75 years. Their common ancestor was a drunkard. Are we to risk the accrescence of such a cohort of criminals to preserve a life incapable of reform, merely for a humanitarian sentiment which contradicts the principles of ages? Or shall we waste money on "educating" such subjects, whilst innocent children lack instruction, and worked out old veterans starve for lack of old-age pensions? It is the duty of a wise legislation to look to the future, and not least should this be so in the science of criminology. In doing so, the state must once for all choose between the two theories, the comparatively modern ideas of the reformatory school, or the views of the still more recent school, which, while utilising the researches of its rival, bases its logic on the real nature of the criminal, and does not shrink from adopting the elementary and original foundations of justice. "The law was added because of transgressions."

The latest school, to carry its theory to its conclusions, demands elimination, and the isolation of the criminal from so-

ciety. It aims not at vindictive punishment, nor so much to accomplish its object by deterrence, but as prevention through a denial of fresh opportunities of misconduct. Its action is thorough. It clears out the criminal growth, root and branch. No seed from it can afterwards be propagated.

Such elimination where human life, present or future, is at stake, can only be accomplished by perpetual imprisonment or death. As to which is the end more merciful it is for the abolitionists of the death penalty to say.

Westminster Review. 170: 325-9. September, 1908.

Modern Penology and the Punishment of Death. Carl Heath.

Humanitarians like myself are so well accustomed to the severe animadversions of those who regard all humane pleas as sentimental, that it is refreshing to meet with so temperate, and, on the whole, fair-minded an opponent as Mr. Advocate Ingram.

The truth of his charge that the article which he so ably attacked, was very largely confined to the deterrent nature of the death penalty, and did not deal with the question of capital punishment from the standpoint of the criminal problem as a whole, must be admitted. It is one of the unfortunate factors of a controversy of any kind that you cannot say everything at once. And the defined purpose of the article in question was simply to draw attention to the experiences of other nations in regard to this particular penalty, the penalty of death.

However, I am quite ready to meet Mr. Ingram on his own ground, and will proceed to deal with his points.

The "original theory of punishment" (if there ever was one) may have been expressed by the *lex talionis*, but from the Middle Ages, at any rate, the penalty of death has not been applied on any such basis. Any and every kind of crime has been subject to this penalty. In the days of the "Tudor Kingdom of Heaven," and of good Queen Bess, to cite an exam-

ple, rogues and petty thieves were sent to the gallows at the rate of three or four hundred a year. And in Georgian times the penalty of the rope was applied to nearly a hundred crimes from the theft of five shillings upwards.

Penalism, in fact, until the French Revolution, was for the masses little else than a huge system of oppression and of violence. But from that philosophic period onward, and with the growth of democracy, terrorism is gradually replaced by punishments supposed to fit the crimes committed. Mr. Ingram, I think, is not justified in speaking of the aim of penalism at the close of the 18th century and early 19th, as being founded on the idea of deterrence. Its aim was mainly to punish the wrong-doer according to his deed, and such, in fact, is still the case, witness the protest only recently made by so anti-humanitarian a penologist as Sir Robert Anderson against the continued prevalence in our penal system of the "punishment for crime theory." Deterrence, pure and simple, as a penological theory or defence of penalties inflicted on wrong-doers, has a more modern basis, combined as it is in modern laws with reformatory efforts. A very good illustration of this combination is afforded by Mr. Gladstone's prison bill, which aims at combining intimidation by striking penalties with reformatory methods by means of preventive sentences of unlimited length.

It is, of course, a mistake to suppose that the humanitarian school confines its attacks on the death sentence to the question of its validity as a deterrent. In considering the deterrent values of penalties, the humanitarian would find much to urge against capital punishment. And even the man in the street, who, we are told, does not read statistics, must be aware that an average of fourteen executions for 140 murders per annum disposes of the supposed "indissoluble connection between murder and the hangman's rope."

But the non-deterrent character of the death penalty is but an item in the objection of humanitarians to this penalty. The fundamental objection, strangely enough, Mr. Ingram ignores. Now this fundamental objection arises from a different

conception of the meaning and cause of crime, and consequently a different conception of the right treatment of criminals. I cannot better express it than in the words of Dr. Douglas Morrison, in his introduction to the English translation of Prof. Enrico Ferri's "Criminal Psychology." "Crime," he says, "is a product of the adverse individual and social conditions of the community as a whole, and the only effective way of grappling with it, is to do away, as far as possible, with the causes from which it springs." It is from this point of view that the demand is made for really reformatory methods—(which I might here remark, have *not* failed, for as much as they have never been tried beyond the very elementary stage of the Borstal system)—and where reformatory methods are impossible, a permanent detention under reasonably humane and scientific conditions.

It is this modern view of crime which makes penalties of the capital order hopelessly out of date, and penal servitude preferable, however badly it may at present be organised, because it presents the possibility of gradual transformation with the growth of new ideas.

Mr. Ingram thinks that you "cannot abolish the death penalty without abolishing also imprisonment for life." This is only relatively a fact. As long as imprisonment is simply punishment, society justly objects to its being unlimited. But once this semi-theological idea is replaced by a real application of reformatory treatment, or simply humane treatment, where reform is hopeless, there is no reason why the hopeless criminal, if such exist, should not be permanently detained than the hopelessly insane. No one raises objection to the detention of the insane, because modern methods of dealing with such are free from the stupid brutalities of punishment which obtained right up to the 19th century. Our Bicêtres for the insane have long since disappeared, but our penal Bicêtres remain.

I am glad that Mr. Ingram frankly admits that the "logical end of the creed," which he supports, "is elimination." The impossibility of that creed has been ably exposed by Prof. Ferri, who points out that if adopted—"it would be necessary

in Italy to execute at least one thousand persons every year, and in France nearly two hundred and fifty, in place of the annual seven or eight."

And who is to decide on the ethical right of eliminating this or that criminal? Vast numbers of crimes in Europe are the product of the majority views of social policy. All the crimes against property, and the violence to which they give rise, who shall say where the sympathy of another age will lie? With the law-abiding and governing classes or the classes which are the product of legal privilege and economic dominance.

And even if, in our complicated society, we could lay down clear and sure precepts of social, political, and economic morality, is it not almost infantile to suppose that, by any manner of means we could "clear out the criminal growth root, and branch," short of clearing out all those causes which give rise to anti-social action which alone, when conventional morality condemns, we call crime. I do not propose to follow Mr. Ingram in his statistics, because, as he points out himself, there are so many other considerations, and statistics do not carry us far one way or the other. But his own are curious. He gives us 341 as the number of murders taking place in Italy in 1863. He would have us believe that the annual average is now about 4,000. There is certainly something lacking here. In France, he shows that murders rose in 56 years (1828-84) from 197 to 234, and infanticide from 102 to 194. The death sentence was in force for these crimes all the time, and many public executions took place, so that I am at a loss to understand how these figures support his views.

How Baron Garofalo obtained the English statistics which Mr. Ingram quotes I do not know, but the Judicial Statistics for 1906, which the Home Office published this year, give the results for the last fifty years in striking fashion. And while it is true that, allowing for the increase of population, crimes of all kinds tend to decrease, this surely is due to the increase in social well being, education, and humanity, and certainly not to the severity of punishment. In 1829, twenty-four persons were publicly executed in London for crimes of theft

and forgery. These crimes are menaced to-day with penalties far less severe than formerly, yet theft and forgery have not increased, indeed, on Mr. Ingram's own showing, the very reverse is the case. To quote Dr. Morrison again: "If the penal laws of the past teach us anything, they teach us that crime cannot be put down by mere severity."

I confess I am more amused than impressed by Garofalo's story of the man who, "in an access of rage," was about to shoot his enemy when, at the moment of pulling the trigger, he suddenly recollected the supposed re-introduction of the death penalty. I wonder if Garofalo believed, or, for the matter of that if Mr. Ingram believes, in the psychological possibility of the associated access of rage with the wonderful access of memory and prompt action thereon.

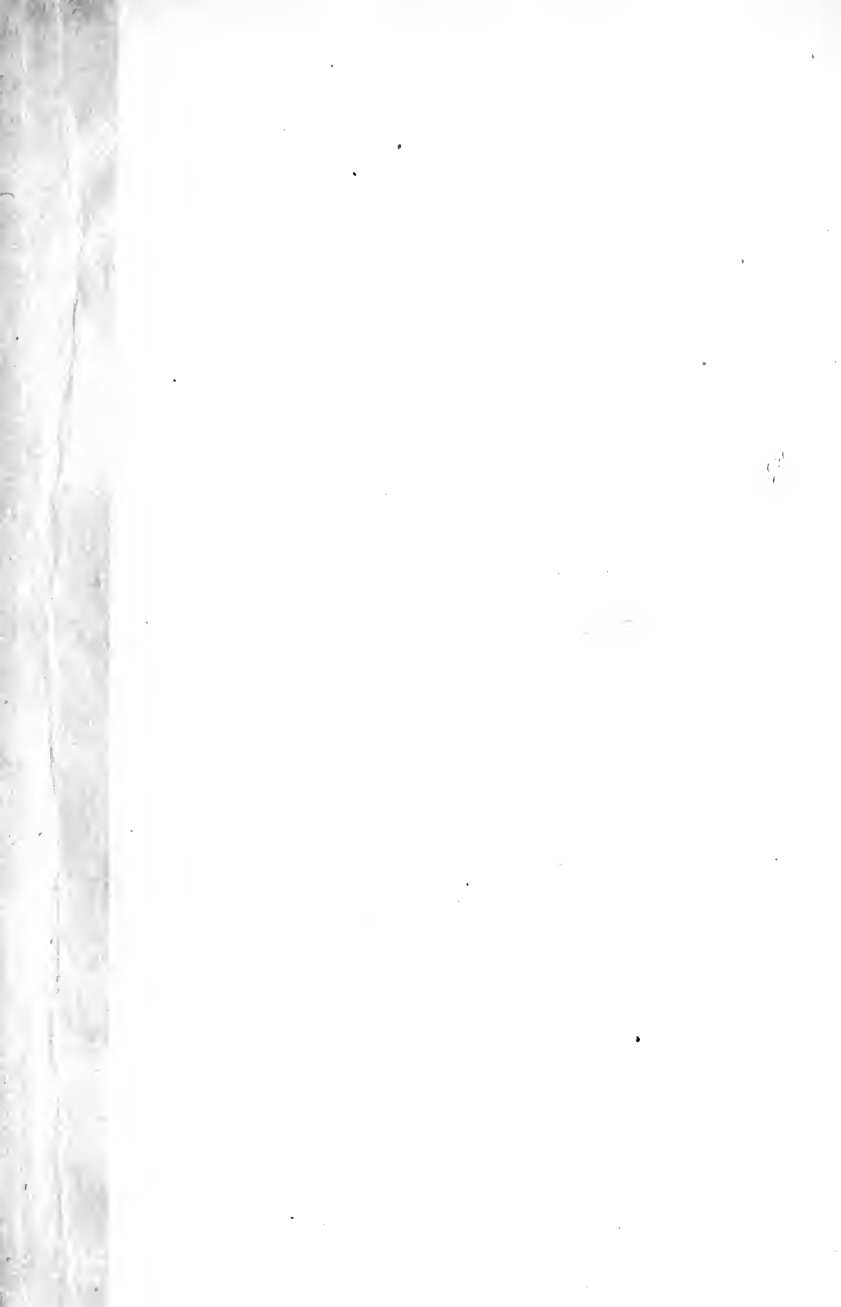
One other point. The recidivist problem is one facing all penal reformers, though it is true it is not one that trenches much on the problem of capital punishment. The homicide rarely repeats his offence. But I submit that there is a better way of dealing with this problem than that of elimination—a way more consonant with science, social ethics, and common justice. Let us at least *try* the extension of the Borstal and kindred systems, and for the small percentage which must ultimately be classed as hopeless let us treat such degeneracy as we treat insanity. For what we chiefly mean by insanity, as far as society is concerned, is a state of socially, mentally, and morally unfit. Now there are large numbers of people in Europe who are legally recognised as insane, many hopelessly so. If we eliminate the supposed hopeless degenerate by legal execution, why not the supposed hopelessly insane. In fact, it were surely wiser to put an end, physically speaking, to these latter unfortunates whose spirits are not burdened by evil acts. Psychical science may not yet have determined belief in the survival of human personality, but it is certainly an open question. And since human society is responsible for these wrecked products, whom we designate criminals, it is surely both foolish and contemptible to shelve the difficulty created by these people by taking their lives. And even if it

could be shown, and I submit that in the present state of our knowledge it cannot be shown, that by the lethal chamber or other method we could finally dispose of these miserable creatures, what is to be said of the ethical reaction on society, the callous spirit which the constant judicial slaughter which would be necessary if the method were to be effective, would engender? Mr. Ingram refers to Sir Robert Hunter and Judge Wills. Perhaps he means Sir Robert Anderson and Sir Arthur Wills, late Justice of the High Court, whose recent writings on these questions in the *Nineteenth Century and After*, and elsewhere, have attracted attention. Sir Arthur Wills is a well-known judge, but I question if he would imagine that he had founded a new penological school. He has, unfortunately, given his support to the re-actionary proposals of the Ex-Police Commissioner, Sir Robert Anderson. Sir Robert Anderson, in his book, "Crime and Criminals," is at some pains to point out that he is dealing with crimes against property, and not with those against the person. His whole conception of crime, its cause and its treatment, is vitiated by a peculiar jumble of narrow theology and social prejudice, and an absolute lack of any intelligent understanding of the social and humanitarian movement of to-day, which movement, I venture to assert, is, in this question of criminality, half a century ahead of Sir Robert Anderson. To call his theories and those of Mr. Justice Wills the *latest* in penology is truly odd. For Sir Robert Anderson, like Mr. Ingram, fondly imagines that you can "clear out the criminal growth," by the simple process of locking up—(Mr. Ingram would prefer eliminating)—the caught criminal.

I suggest, with all respect, that Mr. Ingram extend his studies from the criminal to the social problem, and he will then understand why it is that in this particular question of the retention of the public executioner, every advanced party in Europe is against him, and every re-actionary, every bureaucratic influence is on his side,—why, for example, the Socialists of France support President Fallières in his refusal to use the guillotine and the Black Hundred of the Tzar rejoice over 800 executions in a single year.







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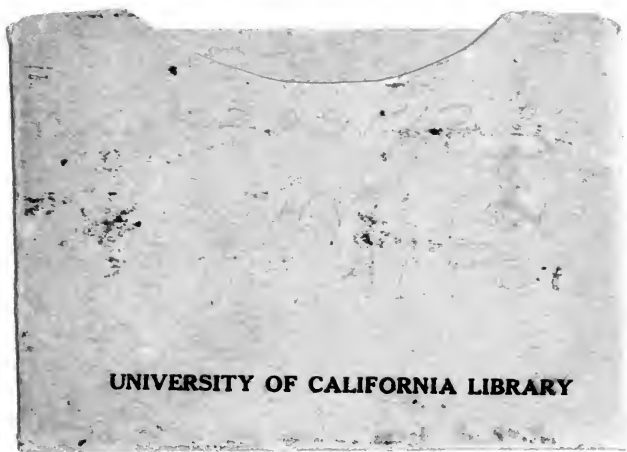
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